

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

of Appeals, District of Columbia

APRIL TERM, 1901.

No. 1081.

FRED RICHARDS BRICK COMPANY, JAMES
TETT, AND HUGH REILLY, APPELLANTS,

vs.

D ROTHWELL AND F. A. LINGER, COMPLAIN
THOMAS R. RILEY, ET AL.

No. 1082.

FUEL ROSS, TRADING AS BARBER & ROSS
APPELLANTS,

vs.

D ROTHWELL AND F. A. LINGER, COMPLAIN
THOMAS R. RILEY, ET AL.

No. 1083.

WM. H. WEST, J. THOMAS WEST, AND HENRY P.
ING AS WM. H. WEST AND BRO., APPELLANTS,

vs.

D ROTHWELL AND F. A. LINGER, COMPLAIN
THOMAS R. RILEY, ET AL.

No. 1084.

WILLIAM GARTHE, CLAIMANT, APPELLANT,

vs.

D ROTHWELL AND F. A. LINGER, COMPLAIN
THOMAS R. RILEY, ET AL.

FROM THE SUPREME COURT OF THE DISTRICT
COLUMBIA.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1901.

No. 1081.

THE ALFRED RICHARDS BRICK COMPANY, JAMES BENNETT, AND HUGH REILLY, APPELLANTS,

vs.

RICHARD ROTHWELL AND F. A. LINGER, COMPLAINANTS;
THOMAS R. RILEY, FRANK BALDWIN, WILLIAM C. PEAKE, SAMUEL ROSS, WILLIAM WITTHAFT, ALEXANDER E. WARNER, JOHN N. HART, GEORGE L. CROW, JONATHAN WOODHOUSE, WHITE HARDWARE COMPANY, JOHN L. ROPER LUMBER COMPANY, UNITED STATES FIDELITY AND GUARANTEE COMPANY, EDWARD DODGE, HENRY DODGE, JENKINS PAINT AND OIL COMPANY, LYMAN ROBINSON, JAMES M. STEWART, ROBERT WOLF, JOHN H. CROSS, EDWARD B. HUGHES, JR., SOUTHERN OIL AND SUPPLY COMPANY, H. B. DAVIS AND COMPANY, WILLIAM P. SNIDER, MARION SNIDER, DWIGHT M. WEEKS, BELT AND DYER, THOMAS BROWN, BERRY BROTHERS, CLARK BROTHERS, CHARLES W. COOKSEY, CONKLING-ARMSTRONG TERRA COTTA COMPANY, JOHN H. CORNING, CENTRAL FIRE PROOFING COMPANY, WILLIAM E. DENNISON, J. McL. DODSON, DOW WIRE WORKS, JOSEPH J. DARLINGTON, EXCELSIOR TERRA COTTA COMPANY, EDGEFIELD AND NASHVILLE MANUFACTURING COMPANY, JOSEPH FANNING, E. N. GRAY & CO., HENRY P. GILBERT, WILLIAM GARTHE, CHARLES W. KING & BRO., LATHROP-HATTON LUMBER COMPANY, JOHN B. LORD, LITTLEFIELD, ALVORD & CO.,

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MARTIN & BROTHER, B. McQUADE, MITCHELL & REED, NORTHWESTERN NATIONAL INSURANCE COMPANY, NELMS & COMPANY, POTOMAC HYDRAULIC CEMENT COMPANY, PERTH-AMBOY TERRA COTTA COMPANY, PHILADELPHIA AND BOSTON FACE BRICK COMPANY, ALBERT F. REAVIS, CHARLES G. SMITH & SON, THOMAS SOMERVILLE & SONS, SALEM-BEDFORD STONE COMPANY, JAMES G. WILSON, J. T. WALKER SONS, WILLIAM H. WEST & BRO., A. L. WEBB & COMPANY, W. T. WALKER & COMPANY, WILLIAM F. WELLER, WASHINGTON SLATE COMPANY, WOODWARD LUMBER COMPANY, AND J. FRANK CAMPBELL.

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APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

THE ALFRED RICHARDS BRICK COMPANY ET AL., Appellants,
vs.
RICHARD ROTHWELL ET AL. } No. 1081.

SAMUEL ROSS, Trading as Barber & Ross, Appellants,
vs.
RICHARD ROTHWELL ET AL. } No. 1082.

WILLIAM H. WEST ET AL.
vs.
RICHARD ROTHWELL ET AL. } No. 1083.

WILLIAM GARTHE, Appellant,
vs.
RICHARD ROTHWELL ET AL. } No. 1084.

a Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER
vs.
THOMAS R. RILEY, FRANK BALDWIN, and
William C. Peake, Doing Business under
the Firm Name and Style of Baldwin &
Peake; S. Dana Lincoln, Samuel Ross;
National Capitol Bank, a Corporation;
William Witthaft, Alexander E. Warner;
Dutcher and Evans, a Copartnership;
Frank Lindsay, W. J. Brent, John N. Hart,
Herman Drinkwater; Clarke Lumber
Company, Successor to Blade's Lumber
Company; George L. Crow, Jonathan W.
Woodhouse, John R. Neely, White Hard-
ware Company, John D. Gamage, John
L. Roper. } No. 20227. In Equity.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Designation of Record on Appeal.

Filed March 5, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Eq. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

Come now the appellants, The Alfred Richards Brick Company, James Bennett, Hugh Reilly, Samuel Ross, and West and Brother, and designate the following parts of the record to constitute the record on appeal to the Court of Appeals, viz:

Original bill, with Exhibits A and B.

Report of temporary receivers, March 14, 1899, omitting list of claims.

Answer of W. C. Peake, March 15, 1899.

Return and answer of Riley, Lincoln, and Ross to rule, March 17, including Exhibit 2, agreement of creditors, and omitting Exhibit 1.

Answer of Witthaft, March 20, 1899.

Affidavit of temporary receivers, March 20, 1899.

Amended bill, March 25, 1899.

Pro confesso vs. Baldwin, May 12, 1899. M. 54, p. 437.

Second report of temporary receivers, May 19, 1899, omitting Exhibit A, but including Exhibit B, letter from Petty.

Answer of Riley, Ross, and Lincoln, June 1, 1899.

Amended cross-bill of Peake, June 26, 1899, omitting exhibits.

Final report of temporary receivers, July 3, 1899.

2 Permanent receivers' report, August 1, 1899, omitting list of claims.

Order to receive and disburse \$3,500. M. 56, p. 126.

Petition of U. S. Fidelity and Guaranty Company, Sept. 26, 1899, including exhibit (bill prepared) and contract, but omitting power of attorney to Riley.

Petition of Riley for compensation, Nov. 8, 1899.

Pro confesso vs. defendants to cross-bill, Dec. 4, 1899. M. 56, p. 483.

Second report of permanent receivers, Dec. 22, 1899, omitting lists of claims.

Order of reference to auditor, Jan. 13, 1900.

Final decree on amended cross-bill of Peake, Jan. 26, 1900. M. 58, p. 177.

Report of auditor, filed September 27, 1900, and do., October 19, 1900, exhibits, and following extracts from testimony before auditor, viz:

Testimony of W. C. Peake, pp. 338 to 340 and 375 and 376; as to claim of Witthaft.

Testimony of Thomas R. Riley, pp. 376 to 381.

Also account of Riley, his ledger and day book, and vouchers of transactions under power of attorney from Baldwin and Peake.

Also clause from school-house contracts, page 357 of auditor's testimony.

Also bond attached to contract for Toner school, 24th and F Sts.

Also bond attached to contract for Peabody School annex, 6th St. bet. B and C Sts. N. E.

3 Also claims of the Alfred Richards Brick Company, James Bennett, Hugh Reilly, Samuel Ross, and West and Borthor, filed with auditor's report.

Exceptions to auditor's report by—

The Alfred Richards Brick Company,

James Bennett,

Hugh Reilly,

Samuel Ross,

West and Brother.

Withdrawal of exceptions to counsel fees and receivers' commissions.

Order confirming auditor's report in part. M. 61, p. 4.

Final order overruling exceptions and confirming auditor's report, Feb. 1, 1901.

Entries of appeal- by these appellants.

W. C. PRENTISS,

H. PRESCOTT GATLEY,

Solicitors for Appellants.

4 Endorsed: Notice hereof acknowledged. Barnard & Johnson, sol'rs for Smith & Son. March 1st, 1901. Douglass & Douglass, complainants' solicitors. Service acknowledged March 1, 1901. Levi H. Davis, solicitors for Cross and Wolf; Joseph D. Wright, sol'r for W. C. Peake, King & Bro., and Belt & Dyer; Bates Warren, for Mitchell & Reed; E. H. Thomas, for Gilbert; C. A. Brandenburg, sol'r as per record; Geo. Francis Williams, sol'r for James M. Stewart & A. L. Webb & Co.; Birney & Woodard, sol'rs for Edgefield & Nash. Mfg. Co. & Joseph Manning; Hamilton & Colbert, att'ys for J. H. Corning *et al.*; Richard A. Ford, att'y for Salem-Bedford Stone Co.; Geo. H. Lamar, as sol'r for A. E. Warner and Hughes, John B. Lord. Service acknowledged for W. E. Dennison March 5, 1901. E. Forrest & Wolf & Rosenberg, for Clarke Bros.; W. G. Johnson, for Nelms & Co.; Wharton E. Lester,

5 for J. T. Walker Sons; Charles Earl, for Pat. Hydl. C. Co.; W. Mosby Williams, for W. T. Walker & Co., use of W. T. Walker Brick Co.; D. W. Baker, sol'r — H. B. Davis & Co., Southern Oil and Supply Co.; R. B. Behrend, att'y for Wm. F. Weller; J. J. Darlington, *in p. p.*; Rutledge Willson, sol'r for White Hardware Co.; J. W. Warner, for Excelsior Terra Cotta Co. & Lathrop-Hatton Lumber Co.; E. Richard Shipp, for A. S. Reavis, Frank Baldwin; James Francis Smith, sol'r for Peake. Service acknowledged. Edward A. Newman, sol'r for Woodward Lumber Co. M'ch 6, 1901. Service acknowledged this 1st day March, 1901. Andrew Y. Bradley, sol.

for Roper Lumber Co. O. H. Budlong, sol'r for Geo. L. Crow; Frank Lyon, att'y for Berry Bros.; John E. Taylor, att'y for N. W. Vol. Ins. Co. & L., A. & Co.; Phillip Walker, att'y for Dow Wire Works; Jesse W. Rawlings, att'y for B. McQuade; John Goode, att'y for Jonathan Woodhouse; W. C. Prentiss, H. P. Gatley, sol'rs for appellants.

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Original Bill, &c.

Filed March 7, 1899.

In the Supreme Court of the District of Columbia, This — Day of March, 1899.

RICHARD ROTHWELL, F. A. LINGER, Com-
plainants,

vs.

THOMAS R. RILEY, FRANK BALDWIN, and
William C. Peake, Doing Business under
the Firm Name and Style of Baldwin &
Peake; S. Dana Lincoln, Samuel Ross;
National Capitol Bank, a Corporation;
William Witthoft, Alexander E. Warner;
Dutcher and Evans, a Copartnership;
Frank Lindsay, W. J. Brent, John N.
Hart, Herman Drinkwater; Clarke Lum-
ber Company, Successor to Blade's Lum-
ber Company; George L. Crow, Jonathan
W. Woodhouse, John R. Neely, White
Hardware Company, John D. Gamage,
John L. Roper, Defendants.

In Equity. No. 20227,
Docket 46.

To the supreme court of the District of Columbia, holding an equity court:

The complainants state as follows:

1. That your complainants, Richard Rothwell and F. A. Linger, are citizens of the United States and residents of the District of Columbia and bring this suit in their own right, as will hereinafter more fully appear.

2. That the defendants Thomas R. Riley, Frank Baldwin, William C. Peake, S. Dana Lincoln, Samuel Ross, William Witthoft are citizens of the United States and residents of the District of Columbia; that the defendant The National Capitol Bank is a corporation, duly incorporated, and has its habitat in the District of Columbia; that the defendants Alexander E. Warner, John R. Neely, W. J. Brent, John N. Hart, John D. Gamage, and John L. Roper are citizens of the United States and residents of the county of Norfolk, in the State of Virginia; that the defendants Herman Drinkwater and Jonathan W. Woodhouse are citizens of the United States and residents of the county of Princess Anne, in the State of

Virginia; that the defendants Frank Lindsay and George L. Crow are citizens of the United States, whose places of residence are unknown to these complainants, and that the defendants The Clarke Lumber Company and The White Hardware Company are each firms, the names of the members of each are unknown to these complainants, and are engaged in business respectively in the cities of Newburne, North Carolina, and Portsmouth, Virginia; that the defendants Dutcher and Evans are a copartnership, the names of the persons who compose which and their places of residence are also unknown to these complainants.

That all of the persons, copartnerships, and the corporation mentioned in this paragraph are sued in their own right, as will hereinafter more fully appear, the said John N. Hart and Herman Drinkwater being joined also as bondsmen for W. J. Brent, one of the defendants herein.

3. That heretofore, to wit, about the 3rd day of June, A. D. 1897, the defendants Frank Baldwin and William C. Peake entered into said copartnership of Baldwin & Peake "for the purpose of carrying on in the District of Columbia and elsewhere the art, trade, and business of contractors and builders."

8 That thereafter, to wit, on the 15th day of June, A. D. 1897, the said Frank Baldwin and William C. Peake, for themselves and for the said firm of Baldwin & Peake, entered into a contract with the Honorable H. L. Spaulding, acting Secretary of the Treasury, for and in behalf of the United States Government, wherein and whereby it was covenanted by and between the said parties thereto that the said firm of Baldwin and Peake should furnish materials for and construct, make, and erect and build three life-saving stations, to wit, at Dam Neck Mills, False cape, and Caffey's inlet, on the coast of North Carolina and Virginia, in the sixth life-saving district, at and for the contract price of fourteen thousand six hundred and thirteen (\$14,613.00) dollars.

That appended to said contract and executed simultaneously therewith by the said Frank Baldwin and William C. Peake, as principals, and by complainants F. A. Linger and Richard Rothwell, as sureties, is a bond unto the United States in the penal sum of fifteen thousand (\$15,000) dollars, conditioned upon the faithful performance of said contract by the said Baldwin & Peake, and upon the further expressed condition, required by law, that they shall promptly make "payment to all persons supplying them with labor and materials in the prosecution of the work provided for in such contract," as all of which will fully appear from the copy of said contract and bond, hereunto attached as a part hereof and marked Exhibit "A."

4. That in pursuance of said contract the said three life-saving stations have been constructed and completed in a fully acceptable manner to the United States, and as a result thereof the United States Treasury is now ready to pay the balance of the consideration therefor, amounting to the sum of eight thousand and eighty-eight dollars (\$8,088.00).

9 5. That there are outstanding and unpaid divers and sundry claims against the said contractors, Baldwin & Peake, and against your complainants, as the sureties of the bond of the said Baldwin & Peake; that said claims are for labor performed, materials furnished, and for money advanced in and about the construction and completion of the said three life-saving stations.

That the defendant Alexander E. Warner and other creditors of like class, unknown to the complainants, have claims for labor performed for Baldwin & Peake in and upon the work of constructing said life-saving stations, but the amounts due and the justice thereof are also unknown to the complainants; and there are also certain other creditors for materials furnished said Baldwin and Peake on said stations whose names and the amounts of whose claims are unknown to these complainants.

That the defendants The Clarke Lumber Company, successor to Blade's Lumber Company, and George L. Crow, Jonathan W. Woodhouse, John R. Neely, The White Hardware Company, John N. Hart, John D. Gamage, John L. Roper, and other creditors of like class, the number of them, their names, and the amounts of their said claims are unknown to complainants, have claims for material alleged to have been used in the construction of said life-saving stations, but the amounts due thereon and the justice thereof are to the complainants also unknown. Complainants further allege on information and belief that the materials furnished by the class of creditors last named were furnished to the defendant W. J. Brent under a subcontract entered into between the said Brent and the defendants Baldwin & Peake, but [the said Jonathan W. Woodhouse claims to have entered into a written contract with the said Baldwin
10 and Peake also, which said alleged contract it is prayed that said Woodhouse be required to file with his answer hereto.

That the complainants are informed and believe that the said Brent gave to the said defendants, Baldwin and Peake, a bond in the penal sum of six thousand (\$6,000) dollars, but the terms and conditions of the said bond and the contract referred to in the foregoing paragraph are unknown to these complainants, and they ask that the said defendants, W. J. Brent, John N. Hart, and Herman Drinkwater, be required to attach to their answers hereto the said contract and bond as exhibits.

That complainants are advised that they are not liable to the said last-named class of creditors who claim under contracts made with said defendant, Brent, but they are further advised that the question of their liability is an unsettled one, and they further allege that the said defendants in said last-named class are now threatening suit against the said firm of Baldwin & Peake and these complainants on the bond given by the said firm, said bond being hereto attached and marked Exhibit "A."

That the defendants The National Capitol Bank and William Witthoft claim to have supplied labor and material in and about the construction of the said life-saving stations to a sum aggregating about three thousand (\$3,000.00) dollars, and complainants are

informed and believe that the said defendants, The National Capitol Bank and William Witthaft, are about to commence suit against the said firm of Baldwin & Peake and these complainants upon the said bond attached hereto and marked Exhibit "A;" as to whether or not these complainants are liable therefor, they are not advised.

11 That all of the said defendants in this paragraph named and others whose names are unknown to complainants are threatening and in fact are about to institute suits against the said firm of Baldwin & Peake and these complainants on the aforesaid bond for the avowed purpose of establishing these complainants' liability thereon and requiring them to make payment of whatever demands and claims that may be established against them.

6. That on or about the 25th day of August, A. D. 1898, the said Frank Baldwin and William C. Peake signed and delivered to defendant Thomas R. Riley a paper-writing, wherein and whereby it was sought to appoint said Riley as their attorney to complete the construction of such of the said life-saving stations as were then unfinished, and to perform certain other contracts of said firm therein mentioned, and to authorize him, the said defendant, Riley, to collect any and all sum or sums of money then due or which thereafter might become due on any of said contracts, and out of the proceeds of said collections so received by the said defendant, Riley, on account of any of the said contracts above referred to, to apply the same "to the completion of the said several contracts and to the liquidation of any indebtedness of the said firm" then existing or thereafter "incurred in and about the execution of said contracts," and after the payment of the said debts, then to account to the said Baldwin and Peake for any surplus then remaining in the hands of said Riley, as all of which will more fully appear by reference to a copy of said paper-writing, hereto attached as a part of this bill and marked "Exhibit B."

12 And the complainants are advised and they so aver that the said paper-writing above referred to and marked Exhibit "B" required, and it was the purpose and intent of the parties thereto, that the said Riley should first pay out of any fund which he should receive from any particular work the debts and obligations incurred in and about the construction thereof before making distribution of any portion of said fund among the general creditors of the said firm of Baldwin & Peake.

That upon the execution of said paper-writing, without giving bond, the said defendant, Riley, acting thereunder, took active charge of the prosecution of all of said work, and has thereunder received large sums of money, the exact amount of which are unknown to your complainants, and your complainants pray a discovery from the said Riley, not under oath, as to the amounts so received by him and of the disbursements of the same.

7. That complainants further allege that they are not parties to the said paper-writing signed by the members of the firm of Baldwin & Peake and referred to in the foregoing paragraph as Exhibit

'A," nor were they consulted about the said paper-writing, nor did they in any manner assent thereto; and complainants are informed and believe that there are divers and sundry other creditors of the said firm—among others, parties who furnished labor and material necessary for the completion of the said three life-saving stations—who were not consulted with respect thereto, nor was the same made directly or indirectly with their assent.

13 That the complainants are advised and they so allege that in equity and good conscience they are entitled to have first paid out of the aforesaid fund resulting from the completion of the said three life-saving stations above referred to all claims for labor and materials actually furnished and all advances which may have been actually made for labor and materials expended in the construction and toward the completion of the said life-saving stations, for which complainants may be legally liable under said bond, before any portion of the said fund is paid to the general creditors of the said firm of Baldwin & Peake, who have not made advances in money, labor, or materials for the purpose of aiding in the completion of the work and structures from which the aforesaid fund was derived.

8. That, contrary to the purpose of the parties to the paper-writing mentioned in paragraph six, under which the defendant Riley has acted, as aforesaid, he has allowed a part of certain creditors of the said firm of Baldwin & Peake resident in the city of Washington, said District, and who have expended neither labor nor materials on any of the said life-saving stations mentioned in the contract referred to in paragraph three of this bill and marked Exhibit "A," to associate with him as a so-called committee for the management of the said business of the said firm, the defendant-Lincoln and Ross, and he, the said Riley, and the said defendants, Lincoln and Ross, as such pretended committee, are directing the affairs of the said firm so intrusted to the hands of the said Riley in violation of the purpose, meaning, and intent of the defendant-Baldwin & Peake in said paper-writing hereto attached and marked

14 Exhibit "B" and contrary to the terms and provisions of the said paper-writing, and they, the said defendants, Riley, Lincoln, and Ross, are now seeking to obtain from the Treasury of the United States and to have paid over to them the said eight thousand and eighty (\$8,088.00) eight dollars with the open and avowed purpose of diverting the same from the payment of such of the claims for labor and materials arising under the contract set out in said paragraph three as are now unpaid, and they, said Riley, Lincoln, and Ross, intend, if they get possession and control of the said fund, to apply the same toward the payment of the claim of certain creditors who in no way contributed toward the construction and completion of said three life-saving stations, to the exclusion of these complainants and other creditors, of which said certain class of creditors the said Riley and Ross belong, and these complainants are informed and believe that said Riley and Ross hold large claims against said firm of Baldwin & Peake—all of which purpose

is not only in violation of the terms and provisions and conditions of the said paper-writing (Exhibit "B"), but in utter disregard of the rights and equities of these complainants and other creditors not represented by the so-called committee to have the said sum of money first applied to the payment of all claims for labor and materials expended towards the construction and completion of the said life-saving stations, from which the said fund was derived.

And your complainants are informed and believe, and so aver, that, in effect, the rights of the said firm to the said money in said Treasury is a claim against the United States which could not, under the

15 law, be assigned, and they are legally advised that the said fund now in the Treasury belongs to the said firm of Baldwin and Peake; and complainants are informed and believe

that the defendant Baldwin is in collusion with the defendants Riley, Lincoln, and Ross, and in case the said claim is settled by means of a check payable to the order of the said firm of Baldwin and Peake he, the said defendant, Baldwin, can and will and has agreed with the said defendant, Riley, to supply the endorsement of the said firm when necessary to carry out the plans and purposes of the said pretended committee, as aforesaid.

9. That on, to wit, the 25th day of August, 1898, and at all times since the execution by the said members of the said firm of the so-called power of attorney in favor of defendant Riley, the said firm of Baldwin and Peake was and has been insolvent, and he, the said defendant, Riley, knew on the said 25th day of August, 1898, and ever since has known the fact of such insolvency.

Wherefore, the premises considered, complainants, being without remedy at law, prays as follows:

First. That an injunction may be issued against defendants Frank Baldwin and William C. Peake, Thomas R. Riley, Samuel Ross, and S. Dana Lincoln, restraining said Baldwin and said Peake and each of them from endorsing any check or checks, draft or drafts, received or to be received in the payment of the said claim against the United States or any part thereof to defendants Riley, Lincoln, and Ross, or to any one of them, or to any one else other than to

16 the receiver hereinafter prayed for, and from in any way co-operating with said defendants, Riley, Lincoln, and Ross, in procuring this or any other fund which might be considered as an asset of the said firm of Baldwin and Peake; that said defendants, Riley, Lincoln, and Ross, be restrained individually and collectively from collecting the said fund of eight thousand and eighty-eight (\$8,088) dollars, or any part thereof, or any asset or assets belonging to the said firm of Baldwin & Peake, and from doing any act or thing which would in any way prevent or tend to prevent the payment of the whole or any part of said claim, or any other asset or assets of the said firm, to the receiver appointed by this court; and, further, that the said defendants, Riley, Lincoln, and Ross, be enjoined and restrained from paying out or disbursing other than to the receiver herein appointed any fund or funds which may now be in their hands or in the hands of either of them,

belonging to or received as the property or funds of or which might be considered as an asset of the said firm of Baldwin & Peake, and from disbursing the whole or any portion of the said fund of eight thousand and eighty-eight (8,088) dollars which may have been received by them.

Second. That a receiver be appointed for and to — charge of the business of the said firm of Baldwin & Peake, with full power to collect said fund of eight thousand and eighty-eight dollars from the United States, and to receive the same or any check or checks therefor, and to do and to perform such other acts and things as may be requisite and necessary in and about the premises, and also

17 to collect any and all moneys which may be due and payable to said firm from any and every source whatsoever, and to hold and disburse the same as this honorable court may hereafter direct, and to that end that defendants Baldwin and Peake be required to endorse to said receiver any check or checks, draft or drafts that may be received by them or either of them or by said receiver requiring their said endorsement to receive funds thereon, and that defendants Thomas R. Riley, S. Dana Lincoln, and Samuel Ross and each of them be required to turn over unto said receiver the whole or such portion of the said fund of eight thousand and eighty-eight dollars (\$8,088.00) as may have been collected by them or either of them, and also any fund or funds which may now be in their hands or in the hands of either of them belonging to or received as the property or fund of or which may be considered as an asset of the said firm of Baldwin and Peake.

Third. That defendant Thomas R. Riley and the defendants S. Dana Lincoln and Samuel Ross be each required to discover, not under oath, in detail, the amounts received by them, both individually and collectively, under the said so-called power of attorney described in paragraph six of this bill or under any other authority or in any manner whatsoever, and also where and how the same has been deposited and what, if any, disbursements have been made of the same or any portion thereof, and that they may be required to turn over to such receiver as may be appointed by this court all assets belonging to the said firm of Baldwin and Peake as may be in their hands or under their control.

18 Fourth. That all persons in any way indebted to the said firm of Baldwin & Peake be required to make payment thereof to said receiver; said receiver be authorized and directed to take such legal steps as may be necessary, under the direction of this court, to enforce collection of said claims of whatsoever nature and kind, and to obtain possession of any and all assets belonging to the said firm of Baldwin and Peake, whatever may be the nature of said assets and wheresoever the same may be found.

Fifth. That the assets of said firm of Baldwin & Peake may be marshaled by this court agreeable to the principles of equity.

Sixth. That all claims and demands of every character and kind whatsoever against the said Baldwin and Peake be inquired into, and the justice thereof determined, and the amounts due thereon

ascertained, and the liability of these complainants be passed on and adjudged by this court, and that the said fund arising from the construction of the said three life-saving stations be first applied, so far as may be necessary, to the full payment of such claims as may be established for labor and materials furnished to the said defendants, Baldwin & Peake, and to such other claims as may be decreed to be preferred and covered by the obligations of the bond on which your complainants are sureties, as aforesaid, and if not sufficient that the general assets of the said firm, now collected or hereafter to be collected, be utilized in the payment or toward the payment of such claims so covered by said bond in so far as such application can be made in pursuance of the principles of equity adjudged to be applicable thereto.

19 Seventh. For such other and further relief as the case may require.

To which end complainants further pray that a writ may be issued in the due process of law commanding the said defendants, Thomas R. Riley, Frank Baldwin, and William C. Peake, S. Dana Lincoln, Samuel Ross; National Capitol Bank, a corporation; William Witthaft, Alexander E. Warner, Dutcher & Evans, Frank Lindsay, W. J. Brent, John N. Hart, Herman Drinkwater, Clarke Lumber Company, George L. Crow, Jonathan W. Woodhouse, John R. Neely, White Hardware Company, John D. Gamage, and John L. Roper, and each of them, to be and appear on a day certain to be named in said process and answer the exigencies of this bill of complaint.

RICHARD ROTHWELL,
F. A. LINGER, *Complainants.*

DOUGLASS & DOUGLASS,
Complainants' Solicitors.

DISTRICT OF COLUMBIA, *To wit:*

I do solemnly swear that I have read the foregoing bill of complaint by mesubscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

RICHARD ROTHWELL.

20 Sworn and subscribed to before me this 2nd day of March, 1899.

[SEAL.]

JOHN A. SWEENEY,
Notary Public, D. C.

EXHIBIT "A."

Filed March 8, 1899.

Treasury Department, Life-saving Service.

This agreement, made and entered into by and between Frank Baldwin and W. C. Peake, doing business under the firm name and style of Baldwin & Peake, Washington, D. C., parties of the first part,

and the United States, by the Secretary of the Treasury, party of the second part :

Witnesseth, that the said parties of the first part, for and in consideration of the covenants, stipulations, and agreements, hereinafter contained, to be kept and performed by the said party of the second part, and the money to be paid hereunder, do hereby covenant and agree to and with the said party of the second part that they, the said parties of the first part, will furnish the materials required for, and will construct, make, erect and build, life-saving station-houses etc., at Dam Neck Mills, False cape, and Caffey's inlet, coasts of North Carolina and Virginia, 6th life-saving district, the exact sites there-

for to be pointed out and shown to the said parties of the first
21 part by some person duly authorized thereto by the Secretary of the Treasury ; said life-saving station-houses, etc., to be completed in all respects agreeably to, and in conformity with, the specifications and plans therefor hereto annexed and forming a part of this contract, and finished ready for the inspection of such person or persons as may be designated for that duty by the Secretary of the Treasury, on or before the fifteenth day of October, 1897.

And the said party of the second part, in consideration of the foregoing, and the further stipulations hereinafter contained, to be done and performed by the said parties of the first part, doth covenant and agree to and with the said parties of the first part, that there shall be paid unto them from the Treasury of the United States, in lawful money of the United States, for the above-named houses, etc., when built and completed in conformity with the foregoing, and the specifications and plans therefor hereunto appended, the same having been first duly inspected by the properly authorized inspecting officer or officers and found satisfactory, the sum of fourteen thousand six hundred and thirteen dollars (\$14,613.00) for said station-houses etc., so constructed and completed as herein stipulated : Provided, however, that no payment shall be made under this contract until after presentation of accounts in proper form, duly certified, for the amount due, and the examination of the same by the proper accounting officers of the Treasury Department.

And it is further stipulated by and between the parties hereto that at all times during the progress of said work the necessary
22 facilities shall be furnished by the said parties of the first part to any person or persons duly authorized by the Secretary of the Treasury for the inspection of said work and of the materials used and employed therein.

And it is further stipulated and agreed by and between the parties hereto that no expense extra the contract shall be incurred, nor shall the United States be held liable for any extra work beyond that stipulated in this contract and the specifications and plans constituting a part thereof, unless the same shall have been first authorized in writing by the Secretary of the Treasury.

And it is further stipulated and agreed by and between the parties hereto that no member of Congress, nor any other officer or employee in the civil, military, or naval service of the United States,

shall be admitted to share in this contract or to any benefit to arise therefrom.

And it is further understood and agreed between the parties hereto, that in case of the neglect or failure of the said parties of the first part to fulfill the stipulations of their part of this contract, then the Secretary of the Treasury is authorized to direct purchases to be made of all the necessary materials, and cause the construction of said houses etc., to be completed as herein specified and required, and the said parties of the first part shall be liable to the said United States, in such event, for any excess of the cost of said houses etc., over the price hereinbefore named and stipulated to be paid therefor to said parties of the first part.

And it is further stipulated and agreed by and between the parties hereto, that in case of neglect or failure of the said parties of the first part to complete the above-mentioned houses etc.,
 23 agreeably to and in conformity with the specifications and plans, and the terms of this contract, on or before the date herein specified for the completion thereof, there shall be deducted the sum of thirty dollars (\$30.00) per day from the amount payable hereunder, in the discretion of the Secretary of the Treasury, for each and every day that the completion and erection of said houses etc., as agreed, may be delayed beyond the time specified in this contract, and the said parties of the first part shall accept and receive the payment hereinbefore provided, less said sum of thirty dollars (\$30.00) per day to be deducted for each and every day's delay, in full payment for the materials furnished and work and labor done and performed under this contract.

And it is further stipulated that the Secretary of the Treasury, whenever in his judgment good and sufficient cause may exist for so doing, shall have the power to annul and revoke all of the terms hereby agreed upon, and the said parties of the first part shall not be entitled to anything on account of damages sustained through said act of the Secretary of the Treasury.

And for the true and faithful performance of all and singular the covenants, stipulations and agreements hereinbefore particularly set forth, the parties of the first part hereunto bind themselves, their heirs, executors, administrators, and assigns, jointly and severally; and the party of the second part binds himself and his successors in office firmly by these presents.

As witness their several hands and seals this 15th day of
 24 June, A. D. one thousand eight hundred and ninety-seven.

FRANK BALDWIN, [SEAL.]
 WM. C. PEAKE, [SEAL.]
Of the Firm of Baldwin & Peake.

Signed, sealed, and delivered in the presence of—

H. K. SIMPSON, [SEAL.]
 For Wm. C. Peake and Frank Baldwin.

A. L. SPAULDING,
Acting Secretary of the Treasury.
 S. K. K.

Know all men by these presents that we, Frank Baldwin and W. C. Peake, doing business under the firm name and style of Baldwin & Peake, of Washington, D. C., in the county of — and State of —, as principals, and F. A. Linger, of Washington, D. C., and Richard Rothwell, of Washington, D. C., as sureties, are held and firmly bound unto the United States in the full and just sum of fifteen thousand dollars (\$15,000.00), lawful money of the United States; for the payment of which sum, well and truly to be made to the United States, we bind ourselves, our and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of June, A. D. one thousand eight hundred and ninety-seven.

25 The condition of the foregoing obligation is such that if the above-bound Frank Baldwin and W. C. Peake, doing business as aforesaid, or their heirs, executors, administrators, and assigns, do and shall well and truly execute the contract hereto annexed, which they have entered into with the United States, whereby the said Frank Baldwin and W. C. Peake, doing business as aforesaid, have agreed to furnish the materials required for and construct, make, build, and erect life-saving station-houses, etc., at Dam Neck Mills, False cape, and Caffey's inlet, 6th life-saving district, and shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contract, conforming in all respects to said contract in all the stipulations, covenants, and agreements therein contained, and the plans and specifications for construction thereto appended, which said contract is annexed hereto, then said obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

FRANK BALDWIN.

WM. C. PEAKE.

F. A. LINGER.

RICHARD ROTHWELL.

[SEAL.]
["]
["]
["]

Signed, sealed, and delivered in the presence of—

H. K. SIMPSON, [SEAL.]

For Frank Baldwin, W. C. Peake, F. A. Linger, Richard Rothwell.

DISTRICT OF COLUMBIA, }
County of Washington, } ss:

26 Before me, a notary public in and for said District, personally appeared the said F. A. Linger and Richard Rothwell, the sureties named in and who executed the foregoing writing obligatory, who, being by me first duly sworn, made oath in solemn form, each for himself, that he is worth the sum of fifteen thousand dollars (\$15,000.00) over and above all his several legal liabilities; and the said F. A. Linger, for himself, made oath that his

property consists of real estate lying in the county of Washington and D. C.; and the said Richard Rothwell, for himself, made oath that his property consists of real estate lying in the city of Washington and D. C.

F. A. LINGER,
RICHARD ROTHWELL,
Signatures of Sureties.

Subscribed and sworn to before me this 16th day of June, 1897.

[SEAL.]

HENRY K. SIMPSON, [SEAL.]
Notary Public.

I hereby certify that F. A. Linger and Richard Rothwell, the persons named in and who executed the foregoing bond as sureties, are to me well known; that they are residents of Washington, D. C., and are, in my opinion, good and sufficient sureties for the purposes mentioned in said bond.

HENRY K. SIMPSON,
Notary Public. [SEAL.]

Approved:

L. P. WILLIAMS,
Assistant Clerk of the Supreme Court, D. C. [COURT SEAL.]

27

Endorsed.

L. R. 60468.

(Stamp: Solicitor of the Treasury, June 16, 1897. Received.)

Contract for the construction of a life-saving stations at Dam Neck Mills, False cape, and Caffey's inlet, 6th district, June 15, 1897. Baldwin & Peake, Washington, D. C., contractor.

TREASURY DEPARTMENT,
LIFE-SAVING SERVICE, *June 16, 1897.*

Respectfully referred to the solicitor of the Treasury for examination and indorsement.

S. K. KIMBALL,
General Superintendent.

DEPARTMENT OF JUSTICE,
OFFICE SOLICITOR OF THE TREASURY, *June 16, 1897.*

I have examined this contract and bond as to form and execution, and in these respects they are approved, when contract is duly executed on behalf of U. S.

N. T. N. ROBINSON,
Ass't Solicitor.

Filed March 8, 1899.

This agreement, entered into this 25th day of August, A. D. 1898, by and between Frank Baldwin, of the first part and William C. Peake, of the second part, both of the District of Columbia.

Witnesseth: Whereas the said parties of the first and second parts, by articles of agreement dated the third day of June, A. D. 1898, became associated together as copartners "for the purpose of carrying on in the District of Columbia and elsewhere, the art, trade, and business of contractors, and builders."

And whereas, as such contractors and builders they have entered into certain contracts with the United States Government to build four (4) life-saving stations (in the States of Virginia and North Carolina), not yet fully completed, and have also entered into contracts with the District of Columbia for work in and about three school-houses in said District, to wit: the Eckington, the Toner and the Peabody annex, which said contracts have been in part completed,

And whereas, certain differences have arisen between the said Baldwin and the said Peake in regard to the management of the business of the firm, now, in order to obviate the possible litigation between the said partners over said differences, and to facilitate the completion and execution of the contracts above referred to, the said parties hereto of the first and second parts have, and do hereby appoint Thomas R. Riley their true and lawful attorney to complete and carry out the several contracts above named,

and for that purpose empower the said Riley to do
29 all things that may be necessary and requisite, in the name and behalf of the said firm, to fully execute said contracts. And further to collect any and all sums of money that may be now payable or may become hereafter payable, from the United States Government or from the District of Columbia, by reason of, or on account of, the said contracts. And from the said monies so received to pay any and all just indebtednesses due and incurred in and about the execution of said contracts. It being distinctly understood that any money received on account of any of the said contracts above referred to, in the discretion of the said Thomas R. Riley, shall be applied to the completion of the said several contracts and to the liquidation of any indebtedness of the said firm now existing or hereafter incurred in and about the execution of said contracts as the said Riley, in his best discretion shall find to be to the best interests of all concerned. And further that any money remaining in the hands of the said Riley, after completing all of the contracts herein referred to, and liquidation of all just debts connected therewith, shall be held by the said Riley to be paid to the said Baldwin and Peake, respectively, as their interests may be hereafter agreed upon, or may be otherwise settled. And it is further agreed

that the said Baldwin and the said Peake will not either of them attempt to collect from the United States or District of Columbia governments any money due or to become due upon the contracts herein referred to, and that they will not either of them enter into any agreement or incur any liability for the said firm relating to the said above-referred-to contracts during the continuance of this agreement, 30 except as the said Riley shall request, and that they will do any and all act or acts in furtherance of the completion of said contracts as the said Riley shall request, including their best personal services and assistance in completing the same. And the said William C. Peake hereby agrees to turn over, upon the execution and delivery of these presents, unto the said Riley any money received by him by reason of said contracts or either of them, not heretofore applied to the payment of the indebtedness of said firm, and further that this agreement shall continue until the full execution of the contracts referred to, and settlements made in reference thereto by the said Riley, unless sooner terminated by mutual agreement, and notice in writing, on the part of the parties hereto of the first part and second part, who also hereby agree to make any further paper or papers during the continuance of this agreement, to carry into effect its terms as the said Riley may be advised by counsel to be necessary or desirable.

In witness whereof the said parties hereto of the first and second parts have hereunto set their hands and seals on the day and year first above written.

FRANK BALDWIN. [SEAL.]
WM. C. PEAKE. [SEAL.]

Signed, sealed, and delivered in the presence of—

CHAS. J. DIETZ,
To Frank Baldwin.
J. J. DARLINGTON,
To Wm. C. Peake.

A true copy.

J. HOLDSWORTH GORDON.

31

Receivers' Report.

Filed March 14, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER,	} Equity. No. 20227, Docket 46.
Complainants,	
vs.	
THOMAS R. RILEY ET AL., Defendants.	

Your receivers in the above-entitled cause, appointed by an order therein of the 7th day of March, 1899, have the honor to report:

1. That, pursuant to the duties assumed, your receivers herein

have promptly ascertained the status of the claim of the firm of Baldwin and Peake arising under the contract between said firm and the United States, acting by and through Honorable H. L. Spaulding, Assistant Secretary of the Treasury, dated June 15, 1897, which said contract is referred to in paragraph three of the bill herein, and a copy thereof constitutes Exhibit A to said bill attached ; that although the three life-saving stations to be constructed under said contract have been completed, as alleged in said bill of complaint, they were not completed within the time prescribed therein ; that by reason of the delay which actually occurred in the completion of said stations the penalties which it is in the power of the said Assistant Secretary of the Treasury to exact would consume the greater part, if not the whole, of the unpaid balance of the contract price, amounting to the sum of \$11,888 ; that of said sum of \$11,888

the sum of \$300 will be retained by the Treasury Department
32 as a guarantee fund for the period of one year from the time of completion of said stations, leaving a balance of \$11,588 subject to present disposition by said Assistant Secretary of the Treasury.

2. That said Assistant Secretary of the Treasury is pleased with the character of the work done under said contract and has not been disposed, therefore, to exact anything by way of penalties against the said firm of Baldwin and Peake in the premises, but up to the present time he has deferred the matter of formally passing upon the question and remitting the penalties for the *expressed* reason that there is a moral duty resting upon him to utilize his power and authority to force those concerned to pay out of the fund to be derived certain claims for labor and materials bestowed upon said stations, not mentioned in the bill of complaint herein, without placing the claimants to the expense and delays incident to the procurement of such relief as they might otherwise receive from the courts.

3. That, as we are informed and believe, prior to the institution of this suit several conferences were held with said Assistant Secretary of the Treasury, at which were represented complainant Rothwell and defendants Peake, Riley, Ross, Lincoln, and others, and said conferences resulted in an express agreement by and between said parties and said Assistant Secretary that said certain claims, a schedule of which is attached hereto, marked Exhibit A, should not be disputed, it being fully understood that provision for the payment of said claims was a condition precedent to the remitting of the penalties ; that each of the parties aforesaid to
33 said understanding agreed to co-operate in and no one of them was in any way to interfere with the payment of said claims by Mr. Charles A. Douglass, to whom it was further agreed that there should be delivered, for the purpose, by defendant Riley, a check, drawn to the order of Baldwin and Peake, to be received by said Riley under his power of attorney from Baldwin and Peake, a copy of which power of attorney constitutes Exhibit B to said bill ; that one of the members of said firm was to endorse said check for

\$3,500 to said Douglass, who should forthwith pay the claims as per said schedule; that under this verbal agreement it was further agreed that there should be delivered to said Riley, under said power of attorney, another check for the balance of the fund payable at this time, amounting to \$8,088, with respect to which it was distinctly understood that all persons concerned would institute such legal proceedings as they might severally see fit.

4. That such checks were to have been ready for delivery about Thursday, the 8th day of March, 1899, but your receivers are informed by the said honorable Assistant Secretary of the Treasury that he has received word from defendant Riley, since the service of a copy of the injunction herein against him, to the effect that he, the said Riley, refuses now to receive either of said checks, and that therefore, and in the absence of the co-operation of defendant Riley, the aforesaid plan could not be carried out unless the said Riley should yet become willing to receive said checks, and he, the said

34 Assistant Secretary, continues to maintain the position that provision for the payment of said undisputed claims shall be a condition precedent to a remission of said penalties.

Wherefore, and because said fund is in jeopardy and it is not within our power to surmount the difficulties in the way without the aid of this honorable court, your receivers respectfully submit this report and ask such instructions and aid as the exigencies of the situation may, in the judgment of the court, require.

GEORGE H. LAMAR,
JOSEPH J. DARLINGTON,
Receivers for Baldwin and Peake.

DOUGLASS & DOUGLASS,
Solicitors for the Receivers.

DISTRICT OF COLUMBIA, *To wit:*

We do solemnly swear that we have read the above receivers' report by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true; and those stated upon information and belief we believe to be true.

GEORGE H. LAMAR.
JOSEPH J. DARLINGTON.

Subscribed and sworn to before me this 13th day of March, A. D. 1899.

[SEAL.]

A. LEFTWICH SINCLAIR,
Notary Public, D. C.

Answer of William C. Peake.

Filed March 15, 1899.

In the Supreme Court of the District of Columbia, This — Day of
March, 1899.

RICHARD ROTHWELL, F. A. LINGER, Com-
plainants,

vs.

THOMAS R. RILEY, FRANK BALDWIN, and
William C. Peake, Doing Business under
the Firm Name and Style of Baldwin &
Peake; S. Dana Lincoln, Samuel Ross;
National Capital Bank, a Corporation;
William Witthoft, Alexander E. Warner;
Dutcher and Evans, a Copartnership;
Frank Lindsay, W. J. Brent, John N.
Hart, Herman Drinkwater; Clarke Lum-
ber Company, Successor to Blade's Lum-
ber Company; George L. Crow, Jonathan
W. Woodhouse, John R. Neely, White
Hardware Company, John D. Gamage,
John L. Roper, Defendants.

} In Equity. No. 20227.

To the supreme court of the District of Columbia, holding an
equity court:

As answer to the bill of complaint herein, the undersigned de-
fendant, William C. Peake, says:

1. That he admits the allegations contained in the first paragraph
of said bill.

2. That he admits the allegations contained in the second para-
graph of said bill.

3. That he admits the allegations contained in the third para-
graph of said bill.

4. That he admits the construction and completion of the three
life-saving stations, as alleged in paragraph four of said bill,
36 except that the balance unpaid under said contract is the
sum of about twelve thousand dollars (\$12,000.00); that by
reason of the delay in the completion of said stations the Honorable
H. L. Spaulding, Assistant Secretary of the Treasury, has the power
under said contract to levy, as penalties, amounts which would ag-
gregate nearly, if not quite, the whole of the sum of twelve thousand
dollars (\$12,000.00); that just prior to and on the same day of the
filing of this suit he, the said Assistant Secretary, orally agreed to
remit the whole of said penalties upon the condition that provision
should be made for the immediate payment of certain claims for
labor and materials bestowed upon said life-saving stations aggregat-
ing three thousand five hundred dollars (\$3,500.00) without the

claimants therefor being placed to the delay and expense incident to the settlement thereof through the courts.

That under said contract the sum of three hundred dollars (\$300.00) will be retained for the period of one year from the date of completion of said stations as a guarantee on a part of the work thereunder, and that he is informed and believes that the eight thousand and eighty-eight dollars (\$8,088.00) remaining of said amount is now withheld by said Assistant Secretary of the Treasury pending a final disposition of said three thousand five hundred dollars (\$3,500.00) of labor and material claims, and that the remission of the penalties is dependent upon proper provision for the payment of said labor and material claims, a schedule of which claims is attached to the report of the receivers filed in this cause on the 14th day of March, A. D. 1899.

5. That he admits *that* the allegations contained in the
37 fifth paragraph of said bill of complaint, and says further that he has signed no written contract with defendant Jonathan W. Woodhouse, and knows nothing of its existence other than that his counsel claims to have such a paper; that the claim of defendants The National Capital Bank and William Witthaft arises upon money procured by him for said firm of Baldwin and Peake for the expressed purpose of supplying labor and material in and about the construction of said life-saving stations, which said funds, so derived, actually went into and were expended for such labor and materials.

6. That he admits the signing and delivery to Thomas R. Riley of the paper-writing dated the 25th day of August, A. D. 1898, and referred to in paragraph six of said bill of complaint; that, acting thereunder without bond, the defendant Riley took active charge of the prosecution of the business of said firm, and has thereunder received large sums of money; that it was never intended that defendant Riley should utilize his powers in the premises in his own interests to the exclusion of the interests of said firm and other creditors thereof; but he avers the fact to be that said paper-writing does not contain certain language set forth in the original draft thereof, and which he, the said William C. Peake, believed that it contained at the time that the same was executed by him and until just prior to the time at which said bill of complaint was filed.

7. That he admits the allegations contained in the seventh paragraph of said bill.

8. That he admits, as alleged, the allegations contained
38 in paragraph eight of said bill, and further states that the said Ross and Lincoln are acting wholly without authority from said firm, either directly or indirectly.

9. That he admits the allegations contained in the ninth paragraph of said bill.

Wherefore, the premises considered, your complainant joins in the prayers of the said bill and asks that the temporary appointment of Joseph J. Darlington and George H. Lamar as receivers for

said firm be confirmed and made permanent, and, further, that the restraining order heretofore granted by this court be continued during the pendency of this suit, save and except in so far as it may be deemed necessary to modify the same from time to time to meet the exigencies which arise in properly winding up the affairs of said copartnership.

And as in duty bound, etc.

JOSEPH D. WRIGHT,
Solicitor for Defendant William C. Peake.

WILLIAM C. PEAKE, *Defendant.*

DISTRICT OF COLUMBIA, *To wit:*

I do solemnly swear that I have heard read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

WILLIAM C. PEAKE.

Subscribed and sworn to before me this 15th day of March, A. D. 1899.

J. R. YOUNG, *Clerk,*
By M. A. CLANCY, *Ass't Cl'k.*

39

Return to Rule to Show Cause.

Filed March 17, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} Equity. No. 20227.
<i>vs.</i>	
THOMAS R. RILEY ET AL.	

For answer to the rule to show cause issued herein against them on the 14th day of March, 1899, and to the petition filed herein by said Richard Rothwell and Frederick A. Linger, complainants, on said 14th day of March, 1899, the respondents, Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, respectfully state as follows:

1. They admit that the bill of complaint was filed herein on the 7th day of March, 1899, and they allege it to be the fact that the order passed on said 7th day of March, 1899, appointing Joseph J. Darlington and George H. Lamar as receivers herein was passed after four o'clock on the evening of said day, and was passed without any notice whatever to these respondents or any of the defendants herein, and without any regard whatever to their rights in the premises.

2. They state that it is true that the firm of Baldwin and Peake were engaged in the construction of three life-saving stations at Dam Neck Falls, False cape, and Caffey's inlet, on the coasts of North Carolina and Virginia, in the sixth life-saving district, under and

by virtue of a contract entered into with the Hon. O. L. Spaulding, Assistant Secretary of the Treasury, acting in that behalf for the United States of America, and they admit that there is now in the hands of the said Assistant Secretary of the Treasury, O. L. Spaulding, the sum of \$11,588.00 on account of said contract, which these respondents say is payable to the defendant Thomas R. Riley, as hereinafter stated.

3. Answering the third paragraph of said petition, these respondents state that they have no knowledge of the efforts made by the receivers herein to collect said fund from the Treasurer of the United States nor of the difficulties met by said receivers in connection therewith.

4. Answering the fourth paragraph of said petition, these respondents state that it is true that said three life-saving stations have been constructed and completed; but they say that said three life-saving stations were not completed by the defendants Baldwin and Peake or either of them, but were completed by the defendant Thomas R. Riley, acting under a power of attorney from said Baldwin and Peake, and with funds furnished to him by certain creditors of said firm of Baldwin and Peake, as hereinafter more fully stated.

5. These respondents state that it is true that said contracts were not completed within the time stipulated therefor, but they deny that said O. L. Spaulding, Assistant Secretary of the Treasury, either has the power to enforce the penalties provided for in said contract, nor has he the disposition to so do. On the contrary, they say that the said Assistant Secretary of the Treasury has expressly declined to enforce said penalties.

6. These respondents, Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, expressly deny that they ever entered into any agreement with the complainants or either of them or with any representative of theirs or any one acting on their behalf that the said Assistant Secretary of the Treasury should turn over to the respondent Thomas R. Riley two drafts or checks, one for the sum of \$3,500.00 and the other for the sum of \$8,088.00, the former of said checks to be delivered by the said Riley to Charles A. Douglass, to be by him disbursed for the payment of certain labor claims set out in a schedule attached to the receivers' report filed herein; on the contrary, these respondents state that on or about the 7th day of March, 1899, said Thomas R. Riley stated to a representative of the complainants that, acting under the power of attorney received by him from the defendants Baldwin and Peake, he was ready to deposit the sum of \$3,500 in cash for the purpose of paying said labor claims, and should then receive one draft for the sum of \$11,588.00 for distribution among the persons entitled thereto in accordance with the several agreements entered into by the firm of Baldwin and Peake, or he was willing that said fund in the hands of the Assistant Secretary of the Treasurer should be divided into two drafts, one for the amount necessary to pay said labor claims, to wit, the sum of \$3,500.00, and the other to be disbursed by him, in accordance with said agreements executed by said firm

of Baldwin and Peake, among the creditors who had advanced the money for the purpose of completing the said three life-saving stations; and these respondents further state that the said Riley further agreed that said draft of \$3,500.00 should be turned

42 over to the said Charles A. Douglass and Alexander E. Warner for distribution by them in payment of said labor claims, and the other draft for \$8,088.00 should be distributed by him in payment of the creditors of Baldwin and Peake furnishing money, as aforesaid, by which he was enabled to complete said three life-saving stations. These respondents further state that they never agreed that said sum of \$3,500.00 should be disbursed in payment of said labor claims while the said sum of \$8,088.00 should remain in the hands of the Assistant Secretary of the Treasury of the United States or should be held by the respondent Thomas R. Riley without being disbursed. On the contrary, these respondents state that Charles A. Douglass, acting on behalf of the complainants, requested these respondents to permit the said sum of \$3,500.00 to be disbursed in payment of said labor claims and to suspend any action looking to the distribution of the said sum of \$8,088.00 among the creditors of said Baldwin and Peake, as hereinbefore referred to, and these respondents expressly declined to enter into any such agreement. These respondents further state that it never was the understanding and agreement entered into by them or by the complainants with the Assistant Secretary of the Treasury that said Assistant Secretary of the Treasury made it a condition precedent to the remission of penalties allowed by the contract hereinbefore referred to between Baldwin and Peake and the United States Government that said labor claims should be paid from the proceeds of the draft for \$3,500.00 to be received by said Thomas R. Riley and by him to be delivered to Charles A. Douglass, representing the complainants; but, on the contrary, they expressly state that

43 the said Assistant Secretary of the Treasury agreed to remit said penalties in any event.

7. Answering the sixth paragraph of this petition, these respondents state that the said Assistant Secretary of the Treasury at the time of the filing of the bill of complaint herein was ready and is now ready to turn over all the fund in his hands to the respondent, said Thomas R. Riley, providing only that said Thomas R. Riley was willing to pay said labor claims of \$3,500.00; and these respondents state that said Riley has always been and is now willing that said labor claims should be paid, provided he is allowed to disburse the balance of said fund, amounting to \$8,088.00, in accordance with the provisions of the agreement entered into by said firm of Baldwin and Peake; but the said Riley never did agree, nor have any of these respondents agreed, that said draft of \$3,500.00 should be received and disbursed in payment of said labor claims while the balance of the fund in the Treasury of the United States, amounting to \$8,088.00, should be tied up in the Treasury Department and withheld from distribution to the persons entitled to receive the same. These respondents further admit that the said Riley declines, under advice of counsel, to permit the distribution of any portion

of said fund in the payment of the said labor claims while the balance of the fund, to which the said respondent, Thomas R. Riley, and the other creditors of Baldwin and Peake are entitled, is withheld from distribution by the unwarranted action of the complainants; and these respondents state that it is not

44 true that the said Riley knows that the result of his refusal to receive said check tends to imperil the entire fund; but, on the contrary, these respondents state that the complainants and those acting in their behalf well know that the said fund is in no danger whatever by reason of any disposition or power on the part of the said Secretary of the Treasury to wipe the same out by the imposition of the penalties provided for in the contract between Baldwin and Peake and the United States Government.

8. Answering the seventh paragraph of said petition, these respondents state that it is not true that the Secretary of the Treasury made it a condition precedent to the remission of said penalties that the said respondent, Thomas R. Riley, should receive and disburse the sum of \$3,500.00 in payment of said labor claims without regard to the distribution of the balances of the fund, and they deny that he made it a condition precedent to the remission of said penalties that said labor claim should be paid at all.

Further answering said petition, these respondents file herewith a copy of the agreement entered into between Frank Baldwin and William C. Peake, partners, trading under the firm name and style of Baldwin and Peake, which they pray may be read and considered as a part hereof, marked "Respondents' Exhibit No. 1," and these respondents also file a copy of a certain agreement entered into between certain creditors of Baldwin and Peake, by which the latter agreed to advance certain monies due them on account of the

45 erection of certain school buildings in Washington, D. C., for the completion of said three life-saving stations, and these respondents say that Thomas R. Riley did receive, on the faith of said agreement, from said creditors the sum of \$25,164.20 for the purpose of building said life-saving stations, of which sum \$7,496.78 has been expended in the work of building said three life-saving stations and a station at Hogg island, which Baldwin and Peake agreed to erect for the United States Government, and they say that, in equity and good conscience, the creditors who advanced said money, and thereby made it possible to build said three life-saving stations, and thus create the fund now in the hands of the Assistant Secretary of the Treasury, should first be paid from said fund in the Treasury, as aforesaid, and these respondents pray that the copy of said agreement may be read and considered as a part hereof, which copy is marked "Respondents' Exhibit No. 2."

And these respondents deny the right of the complainants to any relief whatever in the premises.

And, having fully answered said petition and rule to show cause, these respondents pray to be hence dismissed with costs.

THOS. R. RILEY.
S. DANA LINCOLN.
SAM'L ROSS.

We do solemnly swear that we have read the foregoing answer by us subscribed and know the contents thereof; that the matters and things therein stated on our personal knowledge are true and the matters and things therein stated on information and belief we believe to be true.

THOS. R. RILEY.
S. DANA LINCOLN.
SAM'L ROSS.

Subscribed and sworn to before me this 17th day of March, A. D. 1899, as to Thos. R. Riley and S. Dana Lincoln.

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Cl'k*.

47

EXHIBIT "No. 2."

Filed March 20, 1899.

RESPONDENTS' EXHIBIT No. 2.

Whereas the firm of Baldwin and Peake are contractors for the erection of the Eckington, the Peabody and the Toner school buildings, and also four life-saving stations on the coast of North Carolina, of which the said Eckington school building is now completed, and the remaining buildings are very nearly completed; and whereas the said firm, having used indiscriminately the partial payments received by it on account of some of these buildings upon the work of erecting them all, and, being now somewhat embarrassed, has appointed Thomas R. Riley its agent to receive all moneys, due, or to become due, to it on account of any of said buildings, to employ so much thereof as may be necessary for the completion of those which are uncompleted, to distribute the residue among creditors of the firm who have contributed material or labor to the said buildings or any of them, and to pay over the surplus to said firm of Baldwin and Peake, which said arrangement meets the approval of the said creditors of the firm.

Now, therefore, know all men by these presents, that the undersigned, creditors aforesaid, have agreed, and do hereby agree, to and with the said firm of Baldwin and Peake, and with the said Thomas R. Riley, that the latter may and shall collect all sums of money which may be due or to become due to the firm from the

48 District of Columbia for the erection of said school buildings, and from the United States Government for the erection of the said life-saving stations, the said sums, when so collected, to be applied by said Riley in the manner above set forth, the undersigned hereby withdrawing all notices of indebtedness heretofore filed by them, or any of them with either the District of Columbia, or the United States Government, against the said funds, or any of them, and consenting that the said District of Columbia and the

said United States Government shall make the said payments to the said Riley, regardless of any and all such notices, hereby covenanting and agreeing with the said firm, the said Riley, and to and with each other, that they will not, nor will any of them, file any future notices, nor interpose any obstacle to the collection of the said moneys by the said Riley for the purposes above expressed.

Witness our hands and seals this first day of September, A. D. 1898.

PHILADELPHIA & BOSTON FACE BRICK
CO.,

Per J. H. C. [SEAL.]

CONKLING-ARMSTRONG TERRA COTTA CO.,

Per J. H. C. [SEAL.]

E. N. GRAY & CO. [SEAL.]

MARTIN & BROS., [SEAL.]

— J. M. [SEAL.]

LITTLEFIELD-ALVORD CO. [SEAL.]

JAMES BENNETT. [SEAL.]

J. McL. DODSON. [SEAL.]

S. DANA LINCOLN. [SEAL.]

A. L. REAMS. [SEAL.]

WM. H. WEST & BRO. [SEAL.]

THE ALFRED RICHARDS BRICK CO.

WM. RICHARDS, *General Manager*. [SEAL.]

B. McQUADE. [SEAL.]

GEO. W. THOMAS. [SEAL.]

THOS. R. RILEY. [SEAL.]

THOS. BROWN. [SEAL.]

J. F. CAMPBELL. [SEAL.]

BROWN & ROSS. [SEAL.]

WOODWARD LUMBER CO.

D. WOODWARD, *Pres't*. [SEAL.]

HUGH REILLY. [SEAL.]

THOS. SOMERVILLE & SONS. [SEAL.]

PERTH AMBOY TERRA COTTA CO.,

Per F. L. [SEAL.]

EXCELSIOR TERRA COTTA CO.,

By J. W. WARNER, *Att'y*. [SEAL.]

WM. ROTHWELL. [SEAL.]

Answer of William Witthaft.

Filed March 20, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL, F. A. LINGER, Com-
plainants,

vs.

THOMAS R. RILEY, FRANK BALDWIN, and
William C. Peake, Doing Business under
the Firm Name and Style of Baldwin &
Peake; S. Dana Lincoln, Samuel Ross;
National Capital Bank, a Corporation;
William Witthaft, Alexander E. Warner;
Dutcher and Evans, a Copartnership;
Frank Lindsay, W. J. Brent, John N. Hart,
Herman Drinkwater; Clarke Lumber
Company, Successor to Blade's Lumber
Company; George L. Crow, Jonathan W.
Woodhouse, John R. Neely, White Hard-
ware Company, John D. Gamage, John
L. Roper, Defendants.

In Equity. No. 20227.

The defendant William Witthaft, answering the bill of complaint herein, says as follows:

1. That he admits the allegations contained in paragraph one of the said bill.

2. That he admits so much of paragraph two of the said bill as alleges that Thomas R. Riley, Frank Baldwin, William C. Peake, S. Dana Lincoln, Samuel Ross, and The National Capital Bank are citizens of the United States and residents of the District of Columbia; that he has no personal knowledge of the truth of the other allegations contained in the said paragraph, but upon information and belief he admits the same to be true.

50 3. That upon information and belief he admits the allegations contained in paragraph three of said bill.

4. That he admits the allegations contained in paragraph four of said bill.

5. That he has no personal knowledge of the facts alleged in the first, second, third, fourth, and fifth subparagraphs in paragraph five of the said bill, but that upon information and belief he admits the same to be true; that he admits subparagraphs six and seven of paragraph five of said bill to be correct; that this defendant further states that the original amount received by the said firm of Baldwin and Peake from the said defendant, The National Capital Bank, aggregated the sum of thirty-four hundred (\$3,400.00) dollars; that the same was received by the said firm upon the strength and representation made to this defendant and to the National Capital bank

by or in behalf of the said firm of Baldwin and Peake to the effect that there was then in existence the contract above referred to in paragraph three of the said bill, and that the said sum so received by the said firm was to and would be expended in supplying the labor and material used in the construction and the completion of the said three life-saving stations; that this defendant is informed and believes and so avers that the whole of the said fund was so expended through the said firm of Baldwin and Peake in supplying the labor and material upon the said life-saving stations; that but for the said representations the said defendant would not have endorsed and the said bank would not have discounted the notes of

51 the said William C. Peake, which obligations, by renewal or renewals thereof, are now in the form of one past-due promissory note, dated the 11th day of August, 1898, payable to the order of this defendant and endorsed by him, upon which said note this defendant has waived protest to save cost of same.

That in behalf of the said firm and at the instance of the said Thomas R. Riley representations have been made to this defendant and to the said bank to the effect that the said note would be paid out of the money to be received from the United States Treasury on said three life-saving stations.

That this defendant further avers that the said Riley a short time prior to the filing of this suit has refused to repeat or to give any further assurance with respect to the payment of the said obligation; and this defendant upon information and belief avers that he was then and is now endeavoring to defeat the payment thereof out of the funds due the said firm for the construction of the said life-saving stations.

This defendant further alleges that in equity and in good conscience he is entitled to have the said sum of money now due upon the aforesaid obligation paid out of the funds now in the Treasury of the United States to be paid to the order of the said Baldwin & Peake upon the aforesaid life-saving stations, to the end that this defendant may be exonerated and relieved from any liability upon the aforesaid obligation.

6. That on information and belief he admits the allegations contained in paragraph six of the said bill.

52 7. That he admits on information and belief paragraph seven of said bill.

8. That on information and belief he admits paragraph eight of the said bill.

9. That on information and belief he admits paragraph nine of said bill.

Wherefore, the premises considered, this defendant joins in the prayer of the said bill of complaint and asks that the appointment of receivers heretofore made by this court may be permanent; that the injunction heretofore granted in the said cause may be continued during the pendency of this suit, save and except such modifications thereof as the court may from time to time deem necessary and expedient for the proper administration and disposition of the assets of the said firm of Baldwin and Peake.

That the court may adjudge that this defendant is entitled in equity to have the sum of three thousand (\$3,000) dollars, being the balance due upon the aforesaid note or obligation, paid by the receivers of this court out of the funds received or to be received by them from the Treasury of the United — on account of the erection of the said three life-saving stations, before any of the said funds is applied to the payment of the general debts of the said firm of Baldwin & Peake, to the end that he may be exonerated from any liability of the aforesaid note or obligation.

53 And for such other and further relief as the court may deem meet and just in the premises.

Dated this 20 day of March, 1899.

W. WITTHAFT.

GEORGE H. LAMAR,
Solicitor for Defendant Wm. Witthaft.

Affidavit of Receivers.

Filed March 20, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} No. 20227, Equity Doc. 46.
vs.	
THOMAS R. RILEY ET AL.	

DISTRICT OF COLUMBIA, ss :

We, George H. Lamar and J. J. Darlington, receivers in the above-entitled cause, on oath say that after reading the response of the defendants Samuel Ross, Thomas R. Riley, and S. Dana Lincoln to the rule to show cause heretofore issued in this case, and with a view to correcting any possible inaccuracy in the report to the court by these affiants heretofore made, we called upon Honorable Oliver L. Spaulding, Assistant Secretary of the Treasury, who is and has been in charge of the controversy over the light-house funds involved in this suit, and inquired of him, after stating what had been alleged in said report, and of the answer of said defendants that the remission of the penalties on the light-house contracts was unconditional and irrespective of the payment of the labor and material claims, what the facts were in that regard. Thereupon the said Secretary stated to us, in reply, that, at a time when it had seemed to be agreed that certain labor claims and one claim for materials, amounting in the aggregate to about the sum of \$3,500, would be paid by consent, he had stated that the Department would not enforce the penalties, but that their remission had never been actually made; that the department had never agreed to remit them unless the labor and material claims in question were provided for; that there had been no unconditional agreement or

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promise to remit, and that the entire matter remained unacted upon and undisposed of.

The said Secretary further stated that the department had agreed to issue two checks for the amount due, one in the sum of \$3,500 and — other for the residue of the amount due, both payable to the order of Baldwin and Peake, but to be delivered to the defendant Thomas R. Riley, under the power of attorney held by him, on condition that the \$3,500 check should be applied to the payment of the labor and material claims above referred to, and that this agreement was not conditioned upon any manner or method of disbursing the larger check, nor upon any restriction on the parties in interest to litigate over the application of the proceeds of that check as they might

55 deem proper, and, further, that he had offered to deliver these these two checks to the defendant Riley with the understanding that the \$3,500 check should be applied as above specified, but that the said defendant had declined to receive either of the two said checks, assigning as his reason for refusal that litigation was now pending.

The said Secretary further expressed his desire that some early result, adjustment, or means might be reached under which the payment might be made and the department relieved of the matter, and declared his readiness to turn over the two checks to the defendant Riley, as heretofore agreed, with the understanding that the smaller one should be applied to the said labor and material claims.

GEORGE H. LAMAR.
J. J. DARLINGTON.

Subscribed and sworn to before me this 18th day of March, A. D. 1899.

[SEAL.]

RUTLEDGE WILLSON,
Notary Public.

Amended Bill of Complaint.

Filed March 25, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

RICHARD ROTHWELL, FREDERICK A. LINGER,
Complainants,

vs.

THOMAS R. RILEY, FRANK BALDWIN, and
William C. Peake, Doing Business under
the Firm Name and Style of Baldwin &
Peake; S. Dana Lincoln, Samuel Ross;
National Capital Bank, a Corporation;
William Witthoft, Alexander E. Warner;
Dutcher & Evans, a Copartnership; Frank
Lindsay, W. J. Brent, John N. Hart, Her-
man Drinkwater; Clark Lumber Com-
pany, Successor to Blade's Lumber Com-
pany; George L. Crow, Jonathan W.
Woodhouse, John R. Neely, White Hard-
ware Company, John D. Gamage, John
L. Roper, Defendants.

In Equity. No. 20227.

The complainants, Richard Rothwell and Frederick A. Linger, amend their bill of complaint herein in the following particulars:

1.

By adding to subparagraphs three of paragraph 5 of the said bill, on page 4, the following:

That the defendant The White Hardware Company have or claim to have two claims against the said firm of Baldwin and Peake—one for the sum of two hundred and seventy and $\frac{5}{100}$ (\$270.50) dollars, another for the sum of six hundred (\$600.00) dollars—on both of which they are now threatening to sue said complainants by reason of their suretyship upon the bond hereto attached as Exhibit

"A."

57 That both of said claims are for materials alleged to have been furnished for and in the construction and completion of the said three life-saving stations; for the former claim (\$270.00) it is alleged that the said defendant, White Hardware Company, held the note of the said Baldwin and Peake, although the materials supplied as the consideration therefor were actually furnished to the said subcontractor, W. J. Brent; that the latter of said claims is alleged to be for materials furnished to the said Baldwin and Peake and actually expended and used in the construction of the said three life-saving stations.

2.

By adding a new paragraph, to be inserted after paragraph 9 of said bill and to be known as paragraph 10, as follows:

10. That in addition to complainants' liability by reason of their suretyship on the aforesaid bond for the construction of the said three life-saving stations referred to in Exhibit "A," hereto attached, these complainants are the sureties on the bond of the said defendants, Baldwin and Peake, for the faithful performance of the contract of the said firm (which said contract was executed in the name of the defendant William C. Peake, for and in behalf of the said firm of Baldwin and Peake) with the United States Government, which said contract provided for the erection and completion of the post-office in the city of Allegheny, State of Pennsylvania; said bond contains similar provisions to that of the bond hereto attached and marked Exhibit "A," relative to the payment of all claims for labor and materials used and expended in the completion of the said post-office.

58 That by reason of and on account of the obligations incurred in the erection of the said post-office two judgments have been recovered against these complainants as sureties on the said bond, one of the said judgments being for the sum of eighty-eight (\$88.00) dollars, and the same has been paid by the said complainant, Richard Rothwell; the other of the said judgments for the sum of ninety-three (\$93.00) dollars, which has been likewise settled by the said complainant, Richard Rothwell.

That in another action, instituted by the Edgefield and Nashville Manufacturing Company as complainant, judgment has been recovered against the defendant Peake and the complainant Linger for the sum of eight hundred and sixty-eight $\frac{53}{100}$ (\$868.53) dollars, which said action was instituted upon the aforesaid bond, with the complainants as sureties thereon, for the faithful performance of the said contract for the completion of the post-office in the city of Allegheny, State of Pennsylvania, as hereinbefore referred to, said cause being known as law cause No. 42517, docket No. 46.

That there is also pending in the supreme court of the District of Columbia two lawsuits based upon and growing out of the aforesaid contract for the erection and completion of the said United States post-office at Allegheny, in the State of Pennsylvania, one of said actions at law having been brought in the name of the United States, to the use of one Joseph Eastman, the said cause being known as law cause No. 42791, docket No. 46, and in which it is sought to establish the liability of these complainants for the payment of sundry claims for materials used

59 in completing the said post-office, aggregating the sum of five hundred and sixty-six $\frac{87}{100}$ (\$566.87) dollars, the other of said actions at law having been brought in the name of the United States, to the use of the Champion Iron Company, for the sum of six hundred and eighty (\$680.00) dollars, for certain materials alleged to have been expended in the completion of the said post-

office; said cause being known as law cause No. 42709, docket No. 47; that your complainants are not advised as to the amounts severally due upon said claims, but they allege that they are entitled to have the assets of the said firm of Baldwin & Peake preserved in the custody of the receivers of this court until the question of their liability upon such claims can be judicially determined and the amounts severally due thereon ascertained by the court.

RICHARD ROTHWELL,
F. A. LINGER,
Complainants.

DOUGLASS & DOUGLASS,
Solicitors for Complainants.

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared Richard Rothwell, who, after being duly sworn, deposes and says: I have read the foregoing amendment to the bill of complaint herein and know the contents thereof; the matters and things therein set forth upon my personal knowledge are true, and those stated upon information and belief I believe to be true.

RICHARD ROTHWELL.

Sworn and subscribed to before me this 25th day of March, 1899.

[SEAL.]

JOHN A. SWEENEY,
Notary Public, D. C.

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Decree pro Confesso.

Filed May 12, 1899.

In the Supreme Court of the District of Columbia, the — Day of May, 1899.

RICHARD ROTHWELL and F. A. LINGER	} In Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

It appearing to the court that the defendant Frank Baldwin was duly summoned in the above-entitled cause on the 8th day of March, 1899, and that the said defendant has not caused his appearance to be entered herein, nor filed any answer, plea, or demurrer to the bill of complaint herein, it is by the court, this 12th day of May, A. D. 1899, adjudged, ordered, and decreed that the bill of complaint be, and the same is hereby, taken for confessed against the said defendant, Frank Baldwin.

CHAS. C. COLE,
Asso. Justice.

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Receivers' Second Report.

Filed May 19, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	No. 20227, Eq. Doc. 46.
<i>vs.</i>		
THOMAS R. RILEY ET AL.		

Joseph J. Darlington and George H. Lamar, temporary receivers in the above case, further report to the court as follows:

Pursuant to the duty imposed upon them by the order of their appointment, they filed with the Commissioners of the District of Columbia, on or about the 9th day of March, 1899, a certified copy of the order of their appointment and applied for payment to them of the funds in the hands of the Commissioners due to the firm of Baldwin and Peake.

The situation in the office of the Commissioners of the District of Columbia in relation to the said funds, as these receivers are informed and believe, and therefore aver, is as follows: On or about the 25th day of August, 1898, the firm of Baldwin and Peake had partially completed three public school buildings, namely, the Eckington school building, the 24th and F Streets school building, and the Peabody Annex school building, but in consequence of differences existing between the members of the firm of Baldwin and Peake and other embarrassments it was unable to proceed to the completion of said school buildings. Thereupon, under date of August 25, 1898, its members executed and delivered to Thomas R. Riley an instrument, a copy of which constitutes Exhibit — to the

62 original bill of complaint herein and another copy of which is hereto attached, marked Exhibit "A," as a part of this report, in which said paper-writing both of the members of the said firm agreed that Thomas R. Riley, one of their principal creditors on said buildings and a chosen representative of the other leading creditors, should prosecute said school buildings to completion and should also complete four life-saving stations off the coast of Virginia and North Carolina, referred to in this suit, and that he should "collect any and all sums of money payable from the District of Columbia by reason of, or on account of *that* said contracts, and from the said moneys so received to pay any and all just indebtednesses due and incurred in and about the execution of said contracts," etc.

Whereupon, after having first filed with the Commissioners of the District of Columbia a copy of said instrument, the said Thomas R. Riley undertook to complete said buildings, with the expectation, on the part of the said Riley and the principal creditors in connection with the construction of said school buildings, that no part of the

consideration for said buildings would be paid otherwise than in accordance with the law.

There had been filed with the said Commissioners claims aggregating a large sum of money, to wit, about fourteen thousand (\$14,000) dollars and more, claimed to be due materialmen and contractors on said school buildings, which sum, pursuant to the terms of the contract between the District of Columbia and the firm of Baldwin and Peake, the District authorities were authorized to retain from payment until payments should be fully satisfied ;

63 but, in consideration of the above-mentioned agreement and for the purpose of completing the said buildings and for the realization of the funds out of which their claims should be paid, the greater majority and value of the said claimants withdrew their claims by written agreement, also filed with the Commissioners, and authorized the payment to said Riley of such sums as were or might become due under the said contracts, the amount of claims thus withdrawn being eleven thousand six hundred and ninety-six dollars and fifty cents (\$11,696.50).

Thereupon, in reliance upon said agreement between the firm of Baldwin and Peake, its creditors, and the Commissioners of the District of Columbia, both said Riley and the said creditors believing that the sum of money due or to become due on account of the said buildings would be paid to the said Riley or held in the hands of the Commissioners until an adjustment should be made of all the debts of the firm upon a fair and equitable basis, said Riley proceeded to complete the said buildings, but upon applying after their completion for the payment of the moneys due on the said several contracts he learned that, without any notice to him or any other of the said withdrawing creditors, sundry creditors had been permitted to take judgment before justices of the peace for the amount of their respective claims and garnish this fund in the hands of the Commissioners, to obtain judgment of condemnation, and receive the amount of their said judgments, all without any notice to the said Riley and other creditors as aforesaid. The amount of money thus withdrawn from the fund which was intended to be and was supposed

64 to be held by the District authorities for the equal benefit of all parties justly entitled was \$662.92, and there remains in the hands of the Commissioners the further sum of \$302.06, for which the said Commissioners have accepted service of garnishment, on which judgment of condemnation has been rendered by justices of the peace, and which fund is retained by the auditor of the District to meet the said judgments, unless this court shall determine that the receivers in this cause are entitled to receive the same.

Your receivers find that from the contract price on the said Eckington school building said Commissioners of the District of Columbia had deducted, under the contract, the sum of two hundred and ninety (290) dollars as a penalty for failure to complete the same within the time prescribed by said contract; that a like course had been pursued in connection with the construction by the said firm of the

Western high school under a contract made by said Commissioners with said William C. Peake, a deduction being made in this instance of six hundred and sixty-one (\$661) dollars; and your receivers made application for a remission of said penalties and the payment to them of the sum of nine hundred and fifty-one (951) dollars on account thereof, in response to which application we have been informed at the office of the said Commissioners that there is now no appropriation available with which to pay such claims.

The balance of the moneys still due the firm of Baldwin and Peake, \$1,560.41, has been paid over to the undersigned, as receivers, and has been deposited by them to their credit in the Washington Loan and Trust Company.

65 The receivers are advised and believe, and therefore aver, that neither the said fund so paid out on judgments so recovered, or any part of it, was legally subject to garnishment in the hands of the District authorities; that upon an effort being made to subject the said fund to garnishment proceedings it became the legal duty of the said Commissioners to make return of the facts of the matter to the justices issuing said writs of garnishment without accepting the same, and that their conduct in accepting said garnishments and in consenting to the said judgments of condemnation was contrary to their duty in the premises, and that such judgments of condemnation under the said circumstances constitute no acquittance or defense to the said District with respect to the sums of money so paid out by them under the said judgments, and that the said sums remain due to the firm of Baldwin and Peake for the benefit of their creditors ratably and equitably. They herewith append the statement of John T. Petty, Esquire, auditor of the District of Columbia, bearing date March 17th, 1899, prayed to be read as part hereof, stating the view of the matter entertained by that official, and offering to pay to the receivers the amount of the garnishment funds in his hands, namely, \$302.06, promptly, if the court so directs.

As the receivers are informed and believe, and therefore aver, not only were copies of the said agreement between the said firm and its creditors and of the withdrawal of the claims of the principal creditors in consideration thereof brought to the notice and knowledge of the said Commissioners of the District of Columbia, but the

66 same were filed with the Commissioners, who received them for the said purpose and who gave the said Riley and the creditors represented by him ample assurance by their conduct and action that the same would be respected by them, the said District authorities, after the filing thereof, as aforesaid, having uniformly made all subsequent payments to the said Riley by delivering to him formally and not to the said firm or either of its members all checks for subsequent payments on account of the said buildings, only requiring that they should first be endorsed by the said firm, and but for the assurance afforded by the District, through its appropriate officials, as aforesaid, that the said agreement would be respected by it, the said Riley and the said withdrawing creditors

would not have expended their time, materials, and labor in the completion of the said buildings or have withdrawn their claims, leaving those of other creditors, in no respect more meritorious, to be paid in full, to their detriment and injury and contrary to all the equities of the case.

The receivers submit to the court the question whether an order should not be passed requiring payment to the — of the balance of \$302.06, above referred to, and whether the receivers should or should not be authorized by the court's order to demand payment of the \$666.92, which the District authorities have paid over under the said judgments under the facts and circumstances as above set forth.

JOSEPH J. DARLINGTON.
GEORGE H. LAMAR.

67 DISTRICT OF COLUMBIA, ss :

We, Joseph J. Darlington and George H. Lamar, on oath say that we have read the foregoing second report by us subscribed and know the contents thereof; that the matters therein set forth as of our personal knowledge are true, and those set forth upon information and belief we believe to be true.

JOSEPH J. DARLINGTON.
GEORGE H. LAMAR.

Subscribed and sworn to before me this 17th day of May, A. D. 1899.

RUTLEDGE WILLSON,
Notary Public.

[SEAL.]

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“EXHIBIT B.”

OFFICE OF THE
AUDITOR OF THE DISTRICT OF COLUMBIA,
WASHINGTON, D. C., *March 17, 1899.*

Messrs. Joseph J. Darlington and George H. Lamar, receivers for the firm of Baldwin and Peake.

GENTLEMEN; Baldwin and Peake were contractors for the construction of three school buildings for the District of Columbia, under contracts numbered 2527, 2534, and 2538, respectively. These contracts contained the following provision :

“Pay of workmen.—Contractors will pay the workmen who shall be employed by them upon the work under their contract punctually, in cash current, and not in what is denominated store pay or orders, and will, from time to time, and as often as may be required by the Commissioners, furnish satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required; and if such evidence is not furnished, such sum or sums as may be necessary for such payment may, in the discretion of the Commissioners, be retained until such claims shall be fully satisfied.”

In accordance with this provision, claims for work and materials furnished to the contractors and not paid for by them were presented. Some of these claims were subsequently withdrawn in pursuance of an agreement, as I was advised, between the claimants, the contractors, and one of the bondsmen, by the terms of which the contractors, after being paid by the District, turned over the money received by them to a representative of the parties to the said agreement for distribution among the claimants by whom it had
69 been made. Other claimants, however, declined to be parties to this agreement, and demanded the retention by the District, in accordance with the contract, of the amounts due to them. In compliance with this demand, I required the contractors, upon receiving payments from me under their contracts, to deposit with me a sufficient amount to meet these claims, advising them that the sums so deposited would be held subject to their order or to judicial determination. Agreeably to this understanding, the following deposits were made with me by the contractors aforesaid:

For claim, of	H. A. Herrell and Company.....	\$70.10
"	" W. T. and F. B. Weaver.....	29.49
"	" C. R. Monroe	190.00
"	" W. T. and F. B. Weaver.....	115.48
"	" B. McQuade.....	175.00
"	" W. T. and F. B. Weaver	30.45
"	" B. McQuade.....	126.50
"	" Wm. Garthe.....	440.41
"	" Martin & Bro.....	60.00
"	" H. P. Gilbert	105.00
"	" Wm. Garthe.....	605.00
"	" Central Fire Proofing Company.....	50.00
"	" Mitchell and Reed	251.41
"	" Peerless Slate Company.....	50.65

Of these deposits \$70.10 were paid to H. A. Herrell and Company on the order of the contractors.

Judgments were obtained by W. T. and F. B. Weaver for \$29.49, by C. R. Monroe for \$190.00, by W. T. and F. B. Weaver for \$115.48, by B. McQuade for \$175.00, by W. T. and F. B. Weaver for \$30.45, and by B. McQuade for \$126.50, and the amounts deposited paid over upon process of garnishment.

Deposits to meet the claims of Wm. Garthe, \$440.41; Martin and Brother, \$60.00; H. P. Gilbert, \$105.00; Wm. Garthe, \$605.00, and
70 Central Fire Proofing Company, \$50.00, amounting in the aggregate to \$1,260.41, have been paid to you under the order of the court.

There yet remain in my hands \$251.41 deposited to meet one of the claims of Mitchell and Reed and \$50.65 deposited on account of the claim of the Peerless Slate Company. Suit was entered by

Mitchell and Reed for the amount of their claim of \$251.41 before Justice Johnson and judgment rendered in their favor February 10, 1899, and by the Peerless Slate Company before Justice Mills, who gave judgment in their favor December 14, 1898. Writs of garnishment in each of these cases were duly served upon me and accepted, but, being advised that there might be some question as to the propriety of making payment, I deferred action.

Believing that these deposits, by garnishment, have been taken from my control, although still in my custody, and that I should deliver them in accordance with the demands of the justices who have adjudicated the claims, I have for the present declined to pay them over to you as receivers.

In view of these facts, I respectfully ask that you present the question to the court for decision, avowing my willingness to yield prompt and cheerful obedience to its mandate.

Very respectfully,

J. T. PETTY,
Auditor, D. C.

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Answer of Thomas R. Riley et al.

Filed June 1, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} In Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

Answer of the defendants Thomas R. Riley, S. Dana Lincoln, and Samuel Ross to the bill of complaint.

For answer to the bill of complaint filed in the above-entitled cause, the above-named defendants, Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, state as follows:

1. They admit the allegations contained in the first paragraph of the bill.

2. They admit the matters and things stated in the second paragraph of the bill.

3. They admit that on or about the third day of June, 1897, the defendants Frank Baldwin and William C. Peake entered into a co-partnership, but they have no precise knowledge of the exact terms of the partnership agreement, and if the terms of said agreement be material they call for strict proof thereof. They further admit that said defendants, Baldwin and Peake, on or about the 15th day of June, 1897, entered into a contract with the Hon. H. L. Spaulding, acting Secretary of the Treasury, for and in behalf of the United States Government, whereby the said firm of Baldwin and Peake

72 agreed to construct certain life-saving stations on the coasts of North Carolina and Virginia, said life-saving stations being situated at Dam Neck Mills, False cape, and Caffey's inlet,

and that the contract price was fourteen thousand six hundred and thirteen (\$14,613) dollars. These defendants, however, say that said contract was in writing, and they refer to said written contract for a more exact statement of its provisions. These defendants further state that it is true that at the time of the execution of said contract the defendants Baldwin and Peake, as principal-, and the complainants Rothwell and Lincoln, as sureties, entered into a bond in the penal sum of fifteen thousand (\$15,000) dollars for the faithful performance of the contract entered into by said Baldwin & Peake with the United States. These defendants file herewith a copy of said contract and bond, marked Defendants' Exhibit # 1, which they pray may be read and considered as a part hereof.

4. These defendants admit that said three life-saving stations have been completed, and that there is now in the hands of the said Hon. H. L. Spaulding, Assistant Secretary of the Treasury, the sum of eleven thousand five hundred and eighty-eight (\$11,588) dollars, being the balance due from the United States on account of said contract, which balance, however, these defendants say, is payable to the defendant Thomas R. Riley, as hereinafter stated, said Baldwin & Peake having become unable to complete the construction of said life-saving stations, and the said Thomas R. Riley, in conjunction with the defendants Lincoln & Ross, having completed the same as hereinafter more fully set forth.

73 5. That these defendants have no personal knowledge of the outstanding claims against the firm of Baldwin & Peake, and, if it becomes material in this proceeding to establish the existence of such claims, they call for strict proof thereof.

These defendants deny that the defendant Alexander E. Warner has any valid claim against the defendants Baldwin & Peake or against the complainants as sureties upon the above-mentioned bond in connection with the construction of said three life-saving stations, and they deny that the defendants Clarke Lumber Company, the defendants George L. Crow, Jonathan W. Woodhouse, John R. Neely, White Hardware Company, John N. Hart, John D. Gamage, John L. Roper, or other creditors of a like class have any valid claims against the said Baldwin & Peake or against the complainants or against the funds now in the hands of the Assistant Treasurer of the United States in connection with the construction of said life-saving station. These defendants deny that the defendant The National Capital Bank or the defendant William Witthaft ever supplied any labor or materials for use in the construction of said three life-saving stations.

6. These defendants admit that on or about the 25th day of August, 1898, defendants Baldwin & Peake executed and delivered to the defendant Thomas R. Riley an agreement whereby they appointed the said Riley their true and lawful attorney to complete the construction of four life-saving stations, including the three stations hereinbefore referred to, and also for the completion of three public school buildings in the District of Columbia, to wit, the Eckington,

the Toner, and the Peabody annex, and whereby the said
74 Riley was authorized to collect all money which was then payable or which might thereafter become payable from the United States or from the District of Columbia on account of said contract, and to apply the money so collected by him to the payment of all just debts due and incurred in and about the execution of said contract, and at the completion of said buildings to hold whatever balance there should be remaining in the hands of the said Riley for the benefit of said Baldwin & Peake, as their interests might thereafter be agreed upon. These defendants file herewith a copy of said power of attorney, marked Defendants' Exhibit # 2, which they pray may be read and considered as a part hereof. These defendants say, in acting under said authority thus conferred upon him, the said Thomas R. Riley did collect the sum of — dollars of monies due to said Baldwin & Peake on account of said several contracts, and he has disbursed the sum of — dollars; all of which will lawfully appear by reference to a statement of his account filed herewith, marked Defendants' Exhibit # 3, which they pray may be read and considered as a part hereof.

7. These defendants further say that it is true that the complainants are not parties to the execution of said paper, nor were they consulted in connection therewith, and these defendants are advised that it was not necessary that complainants should either execute or be consulted about the execution of said paper. These defendants say that they are willing that all just claims for labor and material actually furnished by the said Baldwin & Peake in connection with the construction of said three life-saving stations should be paid, and
75 they now tender themselves as ready and willing to pay all such just claims.

8. In answering the eighth paragraph of the bill, these defendants state that it is true that the defendant Riley has associated with himself the defendants Lincoln & Ross in the construction of said life-saving station and in the disbursement of the moneys received by the said Riley, and these defendants say that the complainants have no concern with the disbursement of the fund so to be received by the said Riley after all claims for labor and material furnished to the said Baldwin & Peake in the construction of said three life-saving stations have been paid. These defendants deny that it is their purpose to divert the fund which may come into their hands from the payment of any just claims for labor and materials furnished to said Baldwin & Peake in connection with the said three life-saving stations, and these defendants deny that the said power of attorney given by the said Baldwin & Peake to the said Riley is void because it is in effect the assignment of a claim against the United States.

9. These defendants believe that the firm of Baldwin & Peake was, on the 25th day of August, 1898, in foreclosure difficulty, but they are unable to state whether or not at that time or subsequently said firm was insolvent, and if this allegation of the bill be material these defendants call for proofs thereof.

Further answering said bill of complaint, these defendants state, on facts, on or about the first day of September, 1898, the defendants Baldwin & Peake were engaged in the construction of the three public school buildings in the city of Washington, D. C., hereinbefore referred to, and also in the construction of the four life-saving stations hereinbefore referred to, and having become
76 embarrassed financially and unable to complete their said contracts, they appointed the said Thomas R. Riley as their agent to receive all moneys due or thereafter to become due to said firm on account of any of said buildings, to employ so much thereof as might be necessary for the completion of said building-, and to distribute the residue among the creditors of said firm of Baldwin & Peake for supplies, labor, or materials in connection with the labor or construction of said buildings or any of them, and if any surplus should be left, to place that surplus with said firm of Baldwin & Peake; and in consideration of the agreement on the part of said Baldwin & Peake aforesaid certain creditors of the firm agreed to allow the said Thomas R. Riley to collect all sums of money then due or thereafter to become due from the District of Columbia on account of the erection of said school buildings and from the United States on account of the erection of the said life-saving stations, and said creditors agreed to withdraw all notices of indebtedness filed by them or any of them with either the District of Columbia or the United States Government against said funds or any of them, and said creditors agreed that the said District of Columbia and the said United States Government should make said payments to the said Riley regardless of any and all such notices of indebtedness, and they further agree with the said firm and with the said Riley that they would not, nor would any of them, file any future notices of indebtedness or interpose any obstacle in the collection of said funds by the said Riley for the purposes aforesaid, and these defendants file herewith a copy
of said agreement, marked Defendants' Exhibit # 4, which
77 they pray may be read and considered as a part hereof, and these defendants say that by reason of the premises the creditors represented by them and who signed the aforesaid agreement of a just and lawful claim to whatever funds may now be in the hands of the Treasurer of the United States after the payment of all just claims for labor and material supplied to the said firm of Baldwin & Peake in connection with the construction of said life-saving station.

Answering the allegations contained in the amended bill filed herein, these defendants state that they have no personal knowledge of the claims asserted by the White Hardware Company, one for two hundred and seventy dollars and fifty cents and the other for six hundred dollars, and they have no knowledge of the fact that said hardware company is threatening suit against the complainants. These defendants deny, however, that said White Hardware Company has any valid claim for labor and material furnished by the said Baldwin & Peake in connection with the construction of said

three life-saving stations; but, on the contrary, these defendants say that the materials furnished by said White Hardware Company and which formed the basis of said claims were never supplied to Baldwin & Peake or either of them. These defendants further say that they believe it to be true that the complainants were sureties upon the bond of the said Baldwin & Peake for the construction of a post-office building in the city of Allegheny, State of Pennsylvania, but having no certain knowledge of the fact that this allegation be material, they call for proof thereof. These defendants had no knowledge of the judgments and suits referred to in said amended
78 bill, and if the same be material they call for strict proof thereof, and they deny the right of the complainant by reason of being sureties upon the bond last mentioned to control the fund now in the Treasury of the United States.

And having fully answered, these defendants pray to be hence dismissed with costs.

THOS. R. RILEY.
S. DANA LINCOLN.
SAM'L ROSS.

HAMILTON & COLBERT,
Solicitors for Defendants.

We do solemnly swear that we have read the foregoing answers signed by us and know the contents thereof; that the matters and things therein stated on our personal knowledge is true, and the matters and things stated on our information and belief we believe to be true.

THOS. R. RILEY.
S. DANA LINCOLN.
SAM'L ROSS.

Subscribed and sworn to before me this 31st day of May, 1899.

J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Ass't Cl'k.*

79

Amended Cross-bill of Peake.

Filed June 26, 1899.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

WILLIAM C. PEAKE, Complainant,	} In Equity. No. 20227.
vs.	
THOMAS R. RILEY, FRANK BALDWIN, S.	
Dana Lincoln, Richard Rothwell, and Compl't F. A. Linger, Sam'l Ross, De- fendants.	

To the supreme court of the District of Columbia, holding an equity
court:

Your complainant, William C. Peake, states as follows:

1. That on the 7th day of March, 1899, Richard Rothwell and Frederick A. Linger filed their bill of complaint in the principal cause against Thomas R. Riley and Frank Baldwin and this complainant, doing business under the firm name and style of Baldwin and Peake; S. Dana Lincoln, Samuel Ross, National Capital Bank, a corporation; William Witthaft, Alexander E. Warner, and others, and in the said original bill of complaint the complainants therein, in substance, alleged the citizenship of the parties, complainant and defendant, the formation of the partnership of Baldwin and Peake, between this complainant and the defendant Frank Baldwin, on or about the 3rd day of June, 1897, for the purpose of carrying on, in the District of Columbia and elsewhere, a business of contractors and builders, and the
80 execution of a certain contract between the said firm of Baldwin and Peake and the Honorable H. L. Spaulding, acting Secretary of the Treasury, on behalf of the United States Government, for the construction of three life-saving stations known as Dam Neck Mills, False cape, and Caffey's inlet, in the sixth life-saving district of the United States, for the contract price of fourteen thousand six hundred and thirteen (\$14,613.00) dollars; and in said bill of complaint it is further alleged that a bond was given by the said firm of Baldwin and Peake to the United States Government, with the complainants in the principal cause as the sureties thereon, said bond being given unto the United States in the penal sum of fifteen thousand dollars, conditioned for the faithful performance of the said contract, and said bill alleges the completion of the said three *said* life-saving stations set out and described in the said contract and bond in a manner acceptable to the United States, and that there is a balance due thereon from the United States Government of the sum of over eight thousand dollars; that there are outstanding claims against the said firm of Baldwin & Peake and the sureties on their bond aforesaid, which said claims are for labor per-

formed and materials furnished and money advanced in and about the completion of the said life-saving stations, and that defendants in the principal cause, Alexander E. Warner and others, have unpaid claims for labor and materials as aforesaid, and for which the complainants in the original bill are liable upon the said bond; that there are divers and sundry general debts and obligations of the said firm of Baldwin & Peake that are due and un-

81 paid; that on the 25th day of August, 1898, the complainant herein and the defendant Frank Baldwin signed and delivered to the defendant Thomas R. Riley a paper designated as a power of attorney, wherein and whereby it was sought to constitute the said Riley the agent and representative of the firm of Baldwin & Peake to complete the buildings and structures of the said firm of Baldwin & Peake, then in an unfinished condition, to receive and collect all funds belonging to the said firm, and to first apply the moneys that might be collected by him in the payment of claims for labor and materials growing out of the construction and completion of each particular building and structure from which said fund or funds might be derived; that the said Riley, acting under said power of attorney, received large sums of money, but the disposition thereof by the said Riley is unknown to the complainants in the principal cause; that in equity the complainants in the said original bill are entitled to have the fund derived or to be derived from the completion of the three life-saving stations above referred to applied first to the payment of all claims for labor and materials furnished or money advanced for labor and materials expended in and about the construction and completion of the said stations for which said complainants would be liable under said bond; that the said Riley had associated with him the defendants Lincoln and Ross as a pretended committee, and that the said committee was and is undertaking to manage the affairs of the said firm of Baldwin & Peake; that the members of said committee are receiving the funds and assets of the said firm, and were and are about to apply the same to the payment of the claims of

82 such creditors of the said firm of Baldwin & Peake as they see fit to select, in disregard of the rights of complainants in the principal cause to have the same first applied to the payment of said labor and material claims aforesaid; that the said defendants, Riley, Lincoln, and Ross, were at the time of the filing of the original bill making efforts to collect the fund in the Treasury of the United States, as aforesaid, with the avowed purpose of applying the same to the payment of the debts of certain general creditors of the said firm, in disregard of the equity of the said complainants in the principal cause to have the said claims for labor and materials first wholly paid; that the said firm of Baldwin & Peake was on the day of the execution of the power of attorney to the said Riley, as aforesaid, and has ever since been insolvent; and the said complainants in the principal cause pray in their said bill of complaint, among other things, for an injunction against this complainant and the defendants Baldwin, Lincoln, Riley, and Ross, restraining them

and each of them from receiving or disposing in any way of any of the assets of the said firm of Baldwin & Peake, and for a receiver or receivers, to be appointed by the court, with power to collect the assets of the said firm, and to hold and disburse the same under the orders and directions of this honorable court.

2. That on and prior to the 25th day of August, 1897, this complainant and Frank Baldwin, doing business under the firm name and style of Baldwin & Peake, had contracts for the erection and completion of three public school structures in the District of Co-

83 lumbia, and known as "Eckington," "Peabody," and "Toner" school buildings; three certain life-saving stations, referred to in the bill of complaint in the principal cause and known as "Dam Neck Mills," "False cape," and "Caffey's inlet," in the sixth life-saving district of the United States, and also one certain other life-saving station in the same life-saving district, known as "Hog island;" that the members of the said firm of Baldwin & Peake were at said time involved in personal differences, and said firm was embarrassed in its efforts to complete the construction and erection of the said buildings; that, having faith in the integrity of the said Riley, it was agreed by and between this complainant and the said Frank Baldwin that the defendant Riley should be given a power of attorney by this complainant and the said Baldwin, wherein the said Riley would be given power and authority to complete the said buildings as the agent of said firm, and to that end and in that capacity to receive the funds due and to become due to the said firm of Baldwin & Peake on account of said works, and to apply the same, first, to the payment of all claims for labor and materials that might be then owing and unpaid on account of the particular work from which any certain sum might be derived from and received by him; that this complainant in the preparation of said power of attorney was represented by Joseph J. Darlington, Esq., a member of the bar of the District of Columbia, and it was then agreed by and between the said parties that the power of attorney was to be prepared and executed by the members of the firm of Baldwin & Peake, and should contain a clause or provision that would expressly and clearly provide that all claims for labor and materials in-

84 curred in the construction of any particular work should be first paid out of the fund derived therefrom before the application of any part thereof to the payment of any of the general debts of the said firm of Baldwin & Peake, and this complainant attaches hereto, as his Exhibit No. "1," a rough draft of the original power of attorney, with the insertion therein of the clause above referred to in the handwriting of the said Darlington, and he craves reference thereto as a part hereof; that said power of attorney was thereafterwards prepared, and it was signed by this complainant and the said Frank Baldwin, this complainant being ignorant of the fact that the power of attorney, as signed by him, did not contain the clause as aforesaid, and he remained so ignorant until about the time of the filing of the bill in the principal cause; that, notwithstanding the change in the language of the power of attorney so,

as aforesaid, signed by this complainant, a copy of which said power of attorney is attached to the bill in the principal cause as an exhibit thereto, this complainant submits to the court that the meaning and proper interpretation thereof entitles this complainant to have all claims for labor and materials expended in and about the construction of any of the said buildings paid out of the particular fund that might be derived from the work or structure upon which said labor and materials were expended.

3. That since the execution of the said power of attorney to the said Riley on the said 25th day of August, 1898, the said Riley has undertaken to exercise the functions and powers of agent of the said firm of Baldwin & Peake, and has received large sums of money and

85 has expended the same; that this complainant does not know how much of said money the said Riley has received, nor does

he know in what way or in the payment of what claims the same has been expended; that the sum received by the said Riley for and on account of the completion of the three said school structures known and designated as the "Eckington," "Peabody," and "Toner" schools aggregate over twenty-five thousand (\$25,000) dollars, but this complainant does not know how much money was paid by said Riley toward the completion of the same, nor does this complainant know how much money the said Riley expended on and toward the completion of the four life-saving stations aforesaid and designated as "Dam Neck Mills," "False cape," "Caffey's inlet," and "Hog island," and he made repeated requests of the said Riley for particular information as to the different amounts he received from the several structures and buildings aforesaid, and as to the contracts he entered into for labor and services, as well as for materials used in said buildings, the disbursements made by him, and the debts of the said firm of Baldwin & Peake paid by him, and funds in his hands unexpended and unapplied belonging to the said firm of Baldwin & Peake, but the said Riley has neglected and refused to comply with this complainant's request, and this complainant is in ignorance thereof; that it is necessary to have this court compel the said defendant, Riley, to make discovery of his acts and doings under said power, including the contracts entered into by him, the amounts of money received and disposed of by him, and the funds he may have had on hand belonging to the said firm

86 of Baldwin & Peake; that without said information this complainant is powerless to make proper and complete defense to the suit brought against him and others in the principal cause or to give such information as will enable this honorable court properly and equitably to administer the assets of the said firm of Baldwin & Peake.

4. That this complainant avers and charges that the said defendant, Riley, has improperly managed the affairs of the said firm of Baldwin & Peake, and as a result thereof the business of the said firm has not yielded the sum or sums of money that it otherwise might have done, and the said Riley has contracted debts and paid out sums of money on account of said contracts which with a proper,

prudent, and economical management might have been saved, and as a consequence thereof the said firm of Baldwin & Peake, which was insolvent at the time of the execution of the said power of attorney to said Riley and still is insolvent, has been rendered more utterly and hopelessly insolvent than it otherwise might have been.

5. That in the formation and conduct of the business of the firm of Baldwin & Peake this complainant contributed to the funds of said firm and for its working capital the whole amount thereof, exceeding in aggregate the sum of twelve thousand dollars; that under the terms of the said agreement of copartnership said Baldwin was to receive a sum not exceeding one hundred (\$100) dollars per month until at such time as the affairs of the said partnership would show a profit derived in the conduct thereof; all of which will more fully appear by a reference to the said articles of copartnership, hereto attached and marked Complainant's Exhibit No. "2," to which reference is craved as a part hereof.

87 6. That notwithstanding the articles of copartnership aforesaid and in violation of its provisions and prior to the time at which any proper division could be made thereunder and before any profits had been earned by or accrued to said firm the defendant Baldwin withdrew from the funds of the firm of Baldwin & Peake large sums of money, aggregating about the sum of six thousand (\$6,000) dollars, which this complainant is informed and believes the said Baldwin has secreted and still has under his control; or at least a large part thereof. Complainant further avers that the said Baldwin has in divers other particulars violated the terms and provisions of said partnership agreement.

That in the progress of the construction of the three life-saving stations first hereinbefore mentioned it became necessary to procure the sum of three thousand four hundred (\$3,400) dollars with which to supply labor and materials therefor; that the standing of the said Baldwin in the bank was such as that prior thereto the said National Capital Bank had informed your complainant that no negotiable paper containing the name of the said Baldwin would be received by the said bank, and the said Baldwin had been made fully aware of this fact; that by reason of said fact and with the full assent and at the request of the said Baldwin your complainant represented to the said bank and the said Witthaft that said funds derived were to be used in supplying said labor and said materials under the contract with the United States Government as aforesaid; that thereupon two promissory notes, one for thirteen hundred (\$1,300) dollars and another

88 for twenty-one hundred (\$2,100) dollars, signed by your complainant and made payable to the order of and endorsed by the said Witthaft, were used in said bank in procuring the sum of thirty-four hundred (\$3,400) dollars for the purposes aforesaid, and which was actually expended by the said firm of Baldwin & Peake in supplying labor and materials upon said three life-saving stations, and which said obligations, your complainant is advised, are, in equity, obligations of the said firm of Baldwin & Peake, and the balance still due and unpaid upon said obligation now

amounts to the sum of about three thousand (\$3,000) dollars, and is represented by one renewal promissory note dated the 11th day of August, 1898, which said obligation has been recognized by the said Riley as an obligation of the said firm of Baldwin & Peake, on account of whose representations there has been a delay in the enforcement of the payment thereof.

7. That numerous and sundry persons have claims against the said firm, and that the aggregate amount thereof is large, some of which claims have been reduced to judgment, others are now in suit, and still others are about to be sued on, or suits threatened thereon against the said firm.

8. That there has been no dissolution of the firm of Baldwin & Peake, and this complainant is advised that he is entitled to have the said firm dissolved and its affairs wound up and its property and assets administered by this court, and to that end that he is entitled to have the benefit of a receiver to collect its said assets and to take charge of the property of the said firm and to administer and disburse the same under the orders and directions of this court.

89 9. That this complainant desires to have the appointment of Joseph J. Darlington and George H. Lamar, who have heretofore been appointed temporary receivers by the order of this court in the principal cause, dated the 7th day of March, 1899, confirmed and made permanent.

10. That the defendants Richard Rothwell and F. A. Linger, complainants in the original bill, are the sureties on the certain bond of the said firm of Baldwin & Peake, and are asserting certain liabilities due to them from said firm, claiming reimbursement and indemnity from loss by reason of their said suretyship, and this complainant is desirous of having the assets of the said firm so marshaled as that the said firm may be freed from all liability to said Rothwell and Linger, sureties as aforesaid, or, at least, to the extent that a proper and judicious application of the firm's assets would so relieve the said firm.

Wherefore, the premises considered, your complainant prays:

1. That the said power of attorney be so construed by this court as to entitle this complainant to have first paid, out of any fund received by said Riley from any particular structure or building, all claims for labor and materials employed and expended in and about the completion of said particular building before the application of any part of said fund or funds so derived to the payment of any of the general indebtedness of said firm, and if upon the discovery and
accounting herein prayed for it shall be ascertained that the
90 said Riley has applied the funds so as aforesaid derived by him to the payment of general indebtedness of the said firm of Baldwin & Peake and has left unpaid claims for labor and materials, that the said Riley be held personally liable therefor.

2. That the defendant Riley be required to discover, not under oath, and render an account in detail of the moneys and other property which have been received by him on account of each and all of the buildings or structures set forth and specially described in the

body of this bill, whether the same have been completed or are yet in the process of completion, and also of all disbursements by or under his authority and direction of any money belonging to the said firm of Baldwin & Peake in connection with each and every of the said buildings or structures, and also any or every fund or funds which have been so received under said power of attorney from any source whatsoever, and of any and every disbursement made by him of funds coming into his hands by virtue of said power of attorney or in connection with the said firm of Baldwin & Peake.

3. That this court decree that the defendants Samuel Ross and S. Dana Lincoln have no right in or power under the power of attorney given to the said Riley, and they and each of them be restrained and enjoined from exercising or attempting to exercise, directly or indirectly, any authority over the affairs of the said firm of Baldwin and Peake.

4. That the said defendant, Baldwin, be required to discover,
91 not under oath, and render an account of all moneys received by him from or on the credit of the said firm of Baldwin & Peake prior to the 25th day of August, A. D. 1898, and also as to what fund or property of value he has received, directly or indirectly, from defendants Riley, Lincoln, and Ross or either of them in any capacity whatsoever or from the firm of Baldwin & Peake since the 25th day of August, 1898, and also to whom and what evidence of indebtedness he received for any and every sum of such amount which he has expended since the formation of the copartnership.

5. That the said note of your complainant dated August 11th, 1898, payable to the order of the said William Witthaft be decreed to be an obligation of the said firm of Baldwin & Peake; that the same be given such standing in this cause as the circumstances under which the same was contracted may justify and the principles of equity may require.

6. That this honorable court may decree a dissolution of the firm of Baldwin & Peake; that its affairs be wound up, its property and assets administered under the order and direction of this court, and that the appointment of Joseph J. Darlington and George H. Lamar as receivers under the order of this court of date the 7th day of March, A. D. 1899, be confirmed and the same be made permanent.

7. For such other and further relief as the court may deem just and proper in the premises.

The answer of each of the defendants under oath is hereby expressly waived.

92 To which end complainant prays that a writ of subpoena may issue out of this court, directed to the defendants, Thomas R. Riley, Frank Baldwin, and S. Dana Lincoln, Samuel Ross, Richard Rothwell, and F. A. Linger, commanding them and each of them to be and appear on a day certain to be named therein and answer the exigencies of this cross-bill.

WILLIAM C. PEAKE,
Complainant.

JOSEPH D. WRIGHT,
Attorney for Complainant.

DISTRICT OF COLUMBIA, *To wit*:

I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof; that the matters and things therein stated upon my personal — are true, and those stated upon information and belief I believe to be true.

WILLIAM C. PEAKE.

Sworn and subscribed to before me this 24th day of June, 1899.

J. R. YOUNG, *Clerk*,

By M. A. CLANCY, *Ass't Clerk*.

93

Final Report of Receivers.

Filed July 3, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL. }

vs.

THOMAS R. RILEY ET AL. }

Equity. No. 20227, Docket No. 46.

Joseph J. Darlington and George H. Lamar, temporary receivers in the above case, make their fourth and final report as follows:

That they have collected from the auditor for the District of Columbia, as such temporary receivers, amounts aggregating the sum of \$1,862.47, which amount is now on deposit with the Washington Loan and Trust Company, drawing interest at the rate of two per centum per annum. The deposits were made as follows:

On March 15, 1899, \$1,260.41; on March 13th, \$300.00 (as shown by former reports); on May 22nd, \$302.06, collected under special order of the court.

That they are informed and believe that on June 30, 1899, Messrs. Charles A. Douglass, Clarence A. Brandenburg, and Thomas R. Riley were duly appointed and qualified as permanent receivers in this cause.

Wherefore it is prayed that an order be passed fixing the compensation of your temporary receivers and directing that upon the payment of said balance remaining in their hands, over and above the amount of such compensation, unto said permanent receivers, they be relieved of further obligation under their bond as such temporary receivers.

94

JOSEPH J. DARLINGTON,
GEORGE H. LAMAR,

Temporary Receivers for Baldwin and Peake.

DISTRICT OF COLUMBIA, ss:

We, Joseph J. Darlington and George H. Lamar, on oath say that we have read the foregoing fourth and final report by us subscribed and know the contents thereof, and that the matters therein set forth

as to our personal knowledge are true, and those set — upon information and belief we believe to be true.

JOSEPH J. DARLINGTON.
GEORGE H. LAMAR.

DOUGLASS & DOUGLASS,
Solicitors for Temporary Receivers.

Subscribed and sworn to before me this 3d day of July, A. D. 1899,
by George H. Lamar and J. J. Darlington.

J. R. YOUNG, *Clerk*,
By M. A. CLANCY, *Ass't Cl'k.*

95

Receivers' Report.

Filed August 1, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER, Com- plainants, vs. THOMAS RILEY ET AL., Defendants.	}	Equity. No. 20227, Docket No. 46.
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Your receivers in the above-entitled cause, appointed by an order therein of the 30th day of June, 1899, have the honor to report:

1. That your receivers properly qualified by giving the bond required in said order, and, pursuant to the duties assumed, have ascertained the status of the claim of the firm of Baldwin and Peake, arising under the contract between said firm and the United States, acting by and through the Hon. O. L. Spaulding, Assistant Secretary of the Treasury, dated June 15, 1897, which contract is referred to in paragraph three of the bill of complaint herein, and a copy thereof constitutes Exhibit A, to said bill attached; that although the three life-saving stations to be constructed have, under said contract, been completed, they were not completed within the time prescribed therein; that by reason of the delay which actually occurred in the completion of said stations the penalties in the power of the said Assistant Secretary of the Treasury to exact would have consumed the greater part, if not the whole, of the unpaid balance of the contract price, amounting to the sum of \$11,888;
96 that of said sum of \$11,888 the sum of \$300 will be retained by the Treasury Department as a guarantee fund for the period of one year from the time of the completion of said stations, leaving a balance of \$11,588 subject to present disposition by said Assistant Secretary of the Treasury.

2. That your receivers find that the Assistant Secretary of the Treasury is willing to remit the penalties and pay the balance of the contract price and at this time pay over the said sum of about \$11,588, upon the sole and expressed condition that this honorable court will first authorize and direct the disbursement of about \$3,500

of said amount to the immediate payment, without litigation, of certain labor and material claims against said firm, *and* schedule of which is hereunto attached as a part hereof, marked Exhibit A.

3. That two checks have been drawn, payable to the order of said firm of Baldwin and Peake, one for \$3,500 and the other for the balance of said sum of money, amounting to about \$8,088, and are now held in the Treasury Department for delivery to your receivers upon the presentation to the said Assistant Secretary of the Treasury of an order of this honorable court authorizing the disbursement by your receivers of the fund arising from the collection of the said check for \$3,500 to the payment of said labor and material claims as aforesaid.

Wherefore, and because it is not within the power of your receivers to surmount the difficulties in the way of the collection of said fund arising upon the said contract of said firm without the
97 aid of this honorable court, your receivers respectfully submit this report and ask such instructions and aid as the exigencies of the situation may, in the judgment of the court, require.

CHAS. A. DOUGLASS,
CLARENCE A. BRANDENBURG,
THOS. R. RILEY,

Receivers for Baldwin & Peake.

GEO. H. LAMAR,
Solicitor for Receivers.

DISTRICT OF COLUMBIA, *To wit:*

We do solemnly swear that we have read the above receivers' report by us subscribed and know the contents thereof, and that the facts therein stated upon our personal knowledge are true, and those stated upon information and belief we believe to be true:

CHAS. A. DOUGLASS.
THOS. R. RILEY.

Subscribed and sworn to before me this 25th day of July, A. D. 1899.

[SEAL.]

JOHN A. SWEENEY,
Notary Public, D. C.

98 *Order Directing Receivers to Receive and Disburse \$3,500, &c.*

Filed August 1, 1899.

In the Supreme Court of the District of Columbia, the — Day of August, 1899.

RICHARD ROTHWELL and F. A. LINGER,	} In Equity. No. 20227.
Complainants,	
vs.	
THOMAS R. RILEY ET AL., Defendants.	

Upon consideration of the receivers' report, filed herein on the first day of August, 1899, it is by the court, this 1st day of August, 1899, adjudged, ordered, and decreed that the receivers in said cause be, and they are hereby, authorized and directed to receive the check or draft for \$3,500, mentioned in said report, upon the conditions imposed with respect thereto by the Treasury Department of the United States, and accordingly to apply the proceeds thereof to the immediate payment of certain claims against the firm of Baldwin & Peake for labor and materials, without litigation, to such claimants or their attorney or attorneys, according to the schedule of said claims attached to said receivers' report, marked Exhibit A.

CHAS. C. COLE,
Asso. Justice.

99 *Petition of the U. S. Fidelity & Guarantee Company.*

Filed September 26, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL	} No. 20207. Equity.
vs.	
T. R. RILEY.	

To the supreme court of the District of Columbia, holding an equity court:

The petition of the U. S. Fidelity and Guarantee Company respectfully shows:

1. That heretofore, to wit, on the 7th day of March, 1899, Richard Rothwell and F. A. Linger exhibited their original bill of complaint in the above-entitled cause against the defendants T. R. Riley *et al.*, representing that said complainants were sureties upon the bond of the defendants Baldwin and Peake for the construction of certain life-saving stations on the coast of the State of North Carolina.

2. That Baldwin and Peake had abandoned the work, and numerous claims for labor and material were outstanding, for which the complainants were liable on their bond aforesaid. Such proceedings

were had in said cause that thereafter receivers were appointed of the assets and effects of said firm, including among such assets such amount, if any, to which said firm of Baldwin and Peake might be entitled on account of their contract with the Government of the United States for the construction of a certain life-saving station at Hog island.

100 3. That your petitioner is surety upon the bond of said firm of Baldwin and Peake for the completion of said life-saving station at Hog island in accordance with the contract entered into between said firm of Baldwin and Peake and the Government of the United States.

4. That in the progress of the construction of said life-saving station said firm of Baldwin and Peake, having experienced financial difficulties, abandoned the construction thereof, and certain of the defendants in said suit, as creditors of said firm, proceeded with the completion thereof, and said work has so far proceeded that said life-saving station has been accepted by the Government of the United States as satisfactorily completed in accordance with the contract for its erection.

5. That in the progress of the construction of said life-saving station at Hog island said firm of Baldwin and Peake incurred numerous obligations for labor and material, which still remain unsatisfied.

6. That by reason of said facts your petitioner, as surety upon the bond of said firm, prepared its original bill, setting forth in full the facts in reference to said matter, as appears by reference thereto, hereto annexed and made part hereof.

Your petitioner is advised that by reason of the nature and scope of the order passed in the above cause, with its consent, for the appointment of receivers of the assets and effects of said firm of Baldwin and Peake it is unnecessary that it should file its
101 said bill as an original and independent proceeding, and that it can secure the same relief prayed for in said bill in this proceeding.

Therefore your petitioner prays :

1. That your petitioner may be permitted to intervene herein and be made party complainant to this suit.

2. That process may issue in due course against the defendants to answer this petition.

3. That your petitioner may have the relief prayed for in the original bill, hereto annexed, as though the same were herein fully set forth.

4. And for such other and further relief as the nature of the circumstances of the case require and to this honorable court shall seem proper.

UNITED STATES FIDELITY AND
GUARANTEE COMPANY,
By CLARENCE A. BRANDENBURG,
Its Solicitor.

102 In the Supreme Court of the District of Columbia, Holding
an Equity Court.

THE UNITED STATES FIDELITY AND GUAR- anty Company	}	No. 20227. Equity.
vs.		
THOMAS R. RILEY, S. DANA LINCOLN, SAMUEL Ross, Frank Baldwin, William C. Peake, and John N. Hart.		

To the supreme court of the District of Columbia, holding an equity
court :

The complainant respectfully states :

1. That it is a body corporate, duly incorporated under the laws
of the State of Maryland, authorized by an act of Congress to engage
in business in the District of Columbia, and brings this suit in its
own right, as hereinafter stated.

2. That the defendants are all citizens of the United States and
residents of the District of Columbia, except the defendant John N.
Hart, who is a resident of the city of Portsmouth, in the State of
Virginia, and all of said defendants are sued in their own right, as
hereinafter stated.

3. That heretofore, to wit, on the 3rd day of June, 1897, the de-
fendants Frank Baldwin and William C. Peake entered into a co-
partnership, under the firm name of Baldwin and Peake, "for the
purpose of carrying on in the District of Columbia and
103 elsewhere the art, trade, and business of contractors and
builders."

4. That thereafter, to wit, on the 14th day of October, 1897, the
said Frank Baldwin and William C. Peake, for themselves and as
copartners trading as Baldwin and Peake, entered into a contract
with the United States, acting through the Secretary of the Treas-
ury, whereby they agreed to construct and erect a certain life-saving
station at Hog island, in the State of Virginia, at and for the sum
of \$5,933.

5. That annexed to said contract and executed simultaneously
therewith by the said firm of Baldwin & Peake, and by them as in-
dividuals, as principals, and by your complainant as surety, is a bond
in the penalty of \$7,500 in favor of the United States, conditioned
upon the faithful performance of said contract by said firm of Bald-
win and Peake, among others, subject to the condition that said firm
should make "payment to all persons supplying them with labor
and materials in the prosecution of the work provided for in such
contracts," as will more fully appear from a copy of said contract
and bond, hereto annexed as part hereof and marked as "Ex-
hibit A."

6. That pursuant to said contract said life-saving station has been
erected and fully completed in the manner acceptable to the Gov-
ernment of the United States, and as a result thereof there has be-
come due and payable on account thereof, and the United States

Government is now ready to pay, the balance of said contract price, amounting to the sum of \$—.

104 7. That there are outstanding and unpaid divers claims against said firm for labor done and materials furnished and for money advanced in and about the construction and completion of said life-saving station; that, among others, the defendant John N. Hart claims a large sum of money on account thereof, and threatens to sue your complainant, as surety upon said bond, unless the amount claimed to be due is promptly adjusted.

8. Your complainant has no information as to the amounts justly and properly due on account of the erection of said life-saving station, nor is it informed as to the names of the persons holding such claims.

9. Your complainant is informed and believes, and accordingly avers, that after the execution of the contract aforesaid by the said firm of Baldwin and Peake and the giving of the bond aforesaid, upon which your complainant is surety, to wit, on or about the 25th day of August, 1898, the said Baldwin and Peake signed and delivered to the said Thomas R. Riley an instrument in writing, whereby they undertook to appoint said Riley as their attorney to complete the construction of said life-saving station and to perform certain other contracts of said firm therein mentioned, and to authorize the said Riley to collect all sums of money then due or which might thereafter become due on any of said contracts, and out of the proceeds of said collections so received by said defendant, Riley, to

105 apply the same "to the completion of the said several contracts and to the liquidation of any indebtedness of said firm" then existing or thereafter "incurred in and about the execution of said contracts," and after the payment of said debts to account to said firm of Baldwin and Peake for any surplus then remaining, all of which will more fully appear by reference to a copy of said contract, hereto attached as part of this bill and marked as Exhibit B.

10. Your complainant is advised, and accordingly avers, that said instrument required and it was the purpose and intent of the parties thereto that the said Riley should first pay out of any fund which he should receive on account of any particular work the debts and obligations incurred in and about the construction thereof before making distribution of any portion of said fund among the general creditors of said firm of Baldwin and Peake.

11. That upon the execution of said instrument, without giving bond and without informing your complainant that any such instrument had been executed, the defendant Riley, acting thereunder, took active charge of the prosecution of the erection of said life-saving station at Hog island and the other buildings in said instrument mentioned, and has, pursuant thereto, received large sums of money, the exact amount of which is unknown to your complainant, and, being without other means of discovering the same, except by and through the said defendant, Riley, your complainant prays that the said Riley may in his answer hereto, but not under oath,

an answer under oath being expressly waived, set forth the
106 amounts received by him and the disbursements made by him.

12. Your complainant further avers that it is not a party to said instrument of writing signed by said firm of Baldwin and Peake and hereinbefore mentioned, nor was it consulted with reference thereto, nor did it in any manner assent thereto, nor did it in fact have knowledge of the existence of said instrument until the exhibition of a bill of complaint on behalf of Richard Rothwell and others against Thomas R. Riley and others, in this honorable court, on the 7th day of March, 1899, and that the complainant is informed and believes, and accordingly avers, that there are divers and sundry other creditors of said firm, and, among others, parties who furnished labor and material necessary for the completion of said Hog Island life-saving station, who were not consulted in respect to said instrument, nor was the same made directly or indirectly with their assent.

13. Your complainant is advised, and accordingly avers, that in equity and good conscience it is entitled to have first paid out of the aforesaid fund resulting from the completion of said Hog Island life-saving station all claims for labor and materials actually furnished and all advances which may have been actually made for labor and material and actually expended in the construction and towards the completion of said life-saving station for which your complainant may be legally liable under said bond before any portion of said fund is paid to the general creditors of said firm of Baldwin and Peake, who have not made advances in money, labor, or materials for the purpose of constructing said life-saving station.

107 14. That, contrary to the purpose of the parties to the instrument of writing hereinbefore mentioned under which the defendant Riley has acted, said defendant has allowed certain, but not all, of the creditors of said firm of Baldwin and Peake residents of the city of Washington, and who have neither performed labor nor furnished materials nor advanced money towards the completion of said Hog Island life-saving station, to associate with him as a so-called committee for the management of the business of said firm of the defendants Lincoln and Ross, and they, said Riley, Lincoln, and Ross, as such pretended committee, have been and still are directing the affairs of said firm of Baldwin and Peake so intrusted to the hands of said Riley in violation of the purpose, meaning, and intent of said firm of Baldwin and Peake in said paper-writing set forth and contrary to the terms and provisions thereof, and that the said defendants, Riley, Lincoln, and Ross, as such committee, are now seeking to obtain from the Treasury of the United States and to have paid over to them the balance remaining due on the contract price of said Hog Island life-saving station with the open and avowed purpose of diverting the same from the payment of such of the claims for labor and materials arising under the contract aforesaid, upon which your claimant is surety, as are now unpaid, and they in-

tend, if they get possession and control of said fund, to apply the same towards the payment of the claims of certain creditors who in no way contributed towards the construction of said Hog Island life-saving station, to the prejudice of your complainant and of the creditors who furnished material and performed labor towards the completion thereof, and of which said
108 certain class of creditors said defendants, Riley and Ross, belong, and your complainant is informed and believes that the said Riley and Ross hold large claims against said firm of Baldwin & Peake, all of which purpose is not only in violation of the terms and provisions and conditions of said instrument in writing, but in utter disregard of the rights and equity of your complainant as surety upon said bond and of other creditors not represented by said so-called committee to have said balance of said contract price first applied to the payment of all claims for labor and materials furnished and performed in the completion of said Hog Island life-saving station, out of which said fund arises.

15. Your complainant is informed and believes, and so avers, that in effect the rights of said firm of Baldwin and Peake to said fund in the Treasury of the United States is a claim against the United States which in law could not be assigned, and they are advised that said sum now in the Treasury legally belongs to said firm of Baldwin and Peake.

16. That since the 25th day of August, 1898, and at all times since the execution by said firm of Baldwin and Peake of the so-called power of attorney in favor of the defendant Riley, hereinbefore referred to, the said firm of Baldwin and Peake and both members thereof were, and have been and still are, wholly insolvent, and that the defendant Riley on said 25th day of August, 1898, and ever since, has known the fact of such insolvency.

17. Wherefore your complainant, being without other remedy, respectfully prays:

109 1. That the writ of subpoena may issue out of and under the seal of this honorable court, directed to the persons named as defendants in the caption hereof, commanding them to appear and answer the exigencies of this suit, an answer under oath being hereby expressly waived.

2. That the defendants Frank Baldwin, William C. Peake, Thomas Riley, Samuel Ross, and S. Dana Lincoln may be restrained and enjoined from receiving any draft or check that may be issued in payment of the amount due on account of the contract for the erection of said Hog Island life-saving station, and in the event of the receipt of said sum by the said defendants or any of them prior to the filing of this bill of complaint that the said defendants and each of them may be restrained and enjoined from disbursing or parting with said fund.

3. That a receiver may be appointed with full power to collect the balance due on account of the contract price for the construction of said life-saving station, and to do and to perform all other acts that may be necessary in and about the securing the payment

thereof, and to hold and disburse the same under the order of this court, and in the event of the actual payment of said sum to any of said defendants prior to the filing of this bill that they and each of them may be required to turn over to such receiver the amount so received.

110 4. That the defendant Thomas R. Riley and the defendants Samuel Ross and S. Dana Lincoln may be required to set forth in detail the amounts received by them on account of the construction of said life-saving station, collectively and individually, under said so-called power of attorney herein mentioned, or in any other manner whatsoever, and what disposition has been made of the amounts so received and the disbursement thereof, and what amounts, if any, known — them or contracted by them remain due for work done and materials furnished in the construction of said life-saving station.

5. That an accounting may be had of all claims properly chargeable against the balance of the fund due on account of the construction of said life-saving station, and said sum applied, first, to the payment thereof and the balance in such manner as the court may direct.

6. That the assets of said Baldwin and Peake may be marshalled by this court in accordance with the principles of equity.

7. And for such other and further relief as the nature of the circumstances of the case require and to this honorable court shall seem proper.

THE UNITED STATES FIDELITY &
GUARANTY CO.,

By JOHN R. BLAND, *President.*

CLARENCE A. BRANDENBURG,
Sol'r for Complainant.

111 STATE OF MARYLAND, }
City of Baltimore, } ss:

John R. Bland upon oath says that he is the president of the United States Fidelity and Guaranty Company, a body corporate, and knows the contents of the foregoing bill of complaint, and by him subscribed on behalf of said company; that the facts therein stated upon personal knowledge are true and those stated upon information and belief he believes to be true.

JOHN R. BLAND, *President.*

Subscribed and sworn to before me this 28th day of March, A. D. 1899.

ARTHUR C. PIERCE,
Notary Public.

[SEAL.]

112

EXHIBIT "A."

This agreement, made and entered into by and between Frank Baldwin and William C. Peake, doing business under the firm name and style of Baldwin & Peake, Washington, D. C. parties of

the first part and the United States, by the Secretary of the Treasury party of the second part :

Witnesseth, that the said parties of the first part for and in consideration of the covenants, stipulations, and agreements hereinafter contained, to be kept and performed by the said party of the second part, and the money to be paid hereunto do hereby covenant and agree to and with the said party of the second part that they, the said parties of the first part, will furnish the materials required for, and will construct, make, erect, and build a life-saving station-house, out-buildings, cistern, etc., on the south end of Hog island, Virginia, in exact sites therefore to be pointed out and shown to the said parties of the first part by some person duly authorized thereto by the Secretary of the Treasury ; said life-saving station-house, etc., to be completed in all respects agreeably to and in conformity with, the specifications and plans therefore hereto annexed and forming a part of this contract, and finished ready for the inspection of such person or persons as may be designated for that duty by the Secretary of the Treasury, on or before the first day of February, 1898.

And the said party of the second part, in consideration of the foregoing, and the further stipulations hereinafter contained, to be done and performed by the said parties of the first part, doth covenant
113 and agree to and with the said parties of the first part, that there shall be paid unto them from the Treasurer of the United States, in lawful money of the United States, for the above-named house, etc., when built and completed in conformity with the foregoing, and the specifications and plans therefore hereunto appended, the same having been first duly inspected by the properly authorized inspecting officer or officers and found satisfactory, the sum of (\$5,933.00) five thousand nine hundred and thirty-three dollars for said station-house, etc., so constructed and completed as herein stipulated ; provided, however, that no payment shall be made under this contract until after presentation of accounts in proper form, duly certified, for the amount due, and the examination of the same by the proper accounting officers of the Treasury Department.

And it is further stipulated by and between the parties hereto that at all times during the progress of said work the necessary facilities shall be furnished by the said parties of the first part to any person or persons duly authorized by the Secretary of the Treasury for the inspection of said work and of the materials used and employed therein.

And it is further stipulated and agreed by and between the parties hereto that no expense extra the contract shall be incurred, nor shall the United States be held liable for any extra work beyond that stipulated in this contract and the specifications and plans constituting the part thereof, unless the same shall have been first authorized in writing by the Secretary of the Treasury.

And it is further stipulated and agreed by and between the parties hereto that no member of Congress, or any other
114 officer or employee in the civil, military or naval service of the United States, shall be admitted to share in this contract or to any benefit to arrive therefrom.

And it is further understood and agreed between the parties hereto, that in case of the neglect or failure of the said parties of the first part to fulfill the stipulations of their part of this contract, then the Secretary of the Treasury is authorized to direct purchases to be made of all the necessary materials, and cause the construction of said house, etc., to be completed as herein specified and required, and the said parties of the first part shall be liable to the said United States, in such event, for any excess of the cost of said house, etc., over the price hereinbefore named and stipulated to be paid therefor to said parties of the first part.

And it is further stipulated and agreed by and between the parties hereto, that in case of neglect or failure of the said parties of the first part to complete the above-mentioned house, etc., agreeably to and in conformity with the specifications and plans, and the terms of this contract, on or before the date herein specified for the completion thereof, there shall be deducted the sum of twenty dollars (\$20) per day from the amount payable hereunder, in the discretion of the Secretary of the Treasury, for each and every day that the completion and erection of said house, etc., as agreed, may be delayed beyond the time specified in this contract, and the said parties of the first part shall accept and receive the payment hereinbefore provided, less said sum of \$20 per day to be deducted for each and every day's delay, in
 115 full payment for the materials furnished and work and labor done and performed under this contract.

And it is further stipulated that the Secretary of the Treasury, whenever in his judgment good and sufficient cause may exist for so doing, shall have the power to annul and revoke all of the terms hereby agreed upon, and the said parties of the first part shall not be entitled to anything on account of damages sustained through said act of the Secretary of the Treasury.

And for the true and faithful performance of all and singular the covenants, stipulations, and agreements hereinbefore particularly set forth, the parties of the first part hereunto bind themselves, their heirs, executors, administrators and assigns, jointly and severally; and the party of the second part binds himself and his successors in office firmly by these presents.

As witness their several hands and seals this 14th day of October, A. D. one thousand eight hundred and ninety-seven.

BALDWIN & PEAKE. [SEAL.]

FRANK BALDWIN. [SEAL.]

WM. C. PEAKE.

L. J. GAGE,

Secretary of the Treasury.

S. T. K.

[SEAL.]

Signed, sealed, and delivered in the presence of—

CHARLES E. BURDEN.

CHARLES E. BURDEN.

CHARLES E. BURDEN.

116 Know all men by these presents, that we, Frank Baldwin and William C. Peake, doing business under the firm name and style of Baldwin and Peake, of Washington, D. C. in the county of — and State of — as principals, and The United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland, in the county of — and State of — as sureties are held and firmly bound unto the United States in the full and just sum of seven thousand five hundred dollars (\$7,500), lawful money of the United States, for the payment of which sum, well and truly to be made to the United States we bind ourselves, our and each of our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 14th of October, A. D. one thousand eight hundred and ninety-seven.

The condition of the foregoing obligation is such, that if the above-bounden Frank Baldwin and William C. Peake, doing business as aforesaid, or their heirs, executors, administrators, and assigns, do and shall well and truly execute the contract hereto annexed, which they have entered into with the United States, whereby the said Frank Baldwin and William C. Peake, doing business as aforesaid have agreed to furnish materials required for, and, construct, make, build, and erect a life-saving station-house, etc., at on the south end of Hog island, Virginia and shall promptly make payments to all persons supplying them labor and materials in the prosecution of the work provided for in such contract, conforming in all respects to said contract in all its stipulations, covenants, and agreements therein contained and the plans and specifications for construction thereto appended, which said contract is annexed hereto, then said obligation to be void and of none effect; otherwise, to be and remain in full force and virtue in law.

Words "successors" inserted before execution.

BALDWIN & PEAKE.

FRANK BALDWIN.

WM. C. PEAKE.

THE UNITED STATES FIDELITY AND
GUARANTY COMPANY.

JOHN R. BLAND, *President*.

[L. S.]
[L. S.]
[L. S.]

[SEAL.]

Signed, sealed, and delivered in the presence of—

C. C.

ARTHUR C. PIERCE,

J. S. SWORMSTEDT,

As to John R. Bland, president.

Attest: ALEXANDER PAYSON KNAPP, *Sec'y*.

118

Petition of Thos. R. Riley.

Filed November 8, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	In Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

To the honorable justice of said court, holding a special term thereof in equity :

The petition of Thomas R. Riley respectfully states as follows :

1. That he has for some years been engaged in business in the city of Washington, in the District of Columbia, as a retail dealer in lumber and building materials, and has practical knowledge of builders' work.

2. That Frank Baldwin and William C. Peake, whom are parties to this suit, on or about June 15, 1897, under their firm name of Baldwin and Peake, contracted with the United States to furnish the necessary materials and labor and erect four life-saving stations on the coasts of Virginia and North Carolina for the price of \$14,613; that the said Baldwin and Peake at or about the same time were engaged in erecting three public school buildings for the District of Columbia, namely, the Eckington, the Peabody Annex, and the Toner school buildings, under contracts with the District Commissioners.

3. That on or about August 25, 1898, the said Baldwin and Peake, having disagreed among themselves about the management
119 of their partnership business and being embarrassed financially and unable to proceed further with their work, executed and delivered to your petitioner a power of attorney authorizing him to complete such of said life-saving stations and said school buildings as were unfinished, and to collect all moneys due therefor, and to apply the same to the liquidation of their indebtedness incurred in executing said contracts, as will more fully appear from a copy of said power of attorney filed as an exhibit to the bill in this cause.

4. That about September 1, 1898, at a meeting of about twenty-two of the creditors of the said Baldwin and Peake, who had supplied materials and furnished labor in the execution of the aforesaid contracts for erection of school buildings, called to consider the affairs of the firm, an agreement was signed by said creditors, Baldwin and Peake, and your petitioner whereby your petitioner was empowered to collect all moneys due and to become due to Baldwin and Peake from the District of Columbia for the said school-houses, said money, when collected, to be applied in the manner set forth in the power of attorney; and the said creditors further agreed to withdraw all notices filed by them with the Commissioners of the District of Co-

lumbia concerning the moneys due Baldwin and Peake on account of said school-houses, and further agreed, with each other and with your petitioner, that they would not thereafter file any more such notices, as will more fully appear by reference to a copy of said agreement filed as an exhibit to the bill in this cause.

5. That pursuant to said power of attorney from Baldwin and Peake, which was subsequently ratified by a majority of their
120 creditors, your petitioner took charge of the work of finishing said life-saving stations and said school-houses, and after much time and labor, to the neglect of his own affairs, succeeded only a short time before the receivers herein were appointed in completing the same to the satisfaction of the Commissioners and of the Treasury Department.

6. That your petitioner, between the date of the aforesaid power of attorney and June 27th, 1899, the date on which the receivers herein were appointed, collected \$29,183.95 on said contract, of which amount he disbursed \$29,182.50, leaving a balance of \$1.45 in his hands; that, in addition to said collection and disbursement, your petitioner made a journey to said life-saving stations during the progress of the work.

Wherefore, the premises considered, your petitioner prays that this cause may be referred to the auditor of this court, with instructions to ascertain and report what amount would be reasonable and just compensation to him for his services rendered under the aforesaid power of attorney from Baldwin and Peake, and that the receivers in this cause be directed to pay such sum as may be allowed by the auditor out of the funds in their hands.

THOS. R. RILEY.

DISTRICT OF COLUMBIA, ss:

I, Thomas R. Riley, on oath say that I have read the above petition by me subscribed, and that the statements therein made are true as I verily believe.

THOS. R. RILEY.

121 Subscribed and sworn to before me this 8th day of October,
1899.

JOSEPH SALOMON,
Notary Public, D. C.

[SEAL.]

M. J. COLBERT,
S. T. THOMAS,
Solicitors for Petitioner.

Decree, &c.

Filed December 4, 1899.

In the Supreme Court of the District of Columbia, the — Day of December.

WILLIAM C. PEAKE, Complainant,
vs.
 RICHARD ROTHWELL ET AL., Defendants. } In Equity. No. 20227.

It appearing to the court that William C. Peake, complainant herein and one of the defendants in the original bill in this cause. filed herein his amended cross-bill against the complainants Richard Rothwell and F. A. Linger and his codefendants, Thomas R. Riley, S. Dana Lincoln, Samuel Ross, and Frank Baldwin, on the 25th day of June, 1899; and it further appearing that all of said defendants in the said amended cross-bill were duly and properly served with process, and that they and each of them have failed to cause any answer, plea, or demurrer whatsoever to be filed to the said amended cross-bill, and the time therefore having fully elapsed, it is by the court, this 4th day of December, 1899, adjudged, ordered, and decreed that the said amended cross-bill be, and it is hereby,
 122 taken for confessed against the said defendants, Richard Rothwell, F. A. Linger, Thomas R. Riley, S. Dana Lincoln, Samuel Ross, and Frank Baldwin.

JOB BARNARD, *Justice.*

Second Report of Permanent Receivers.

Filed December 22, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL. }
vs. } Equity. No. 20227, Docket No. 46.
 THOMAS R. RILEY ET AL. }

Charles A. Douglass, Clarence A. Brandenburg, and Thomas R. Riley, permanent receivers for the firm of Baldwin & Peake in the above case, make their second report, as follows:

1. That as such receivers they have received or collected and deposited in bank funds from the following sources, to wit:
 - (a.) From the temporary receivers the net amount in their hands after deducting their commissions..... \$1,683.70
 - (b.) From the U. S. Treasury, on account of contract for construction of Caffey's Inlet, Dam Neck Mills, and False Cape life-saving stations..... 8,088.00

123	(c.) From the U. S. Treasury on account of said three life-saving stations, subject to certain conditions as to payment of preferred claims, a schedule of which constitutes Exhibit A to our former report.....	3,500.00
	(d.) From the U. S. Treasury on account of contract for construction of Hog Island life-saving sta.....	5,142.42
	Total.....	<u>\$18,414.12</u>

2. That pursuant to the order of this honorable court, dated August 1st, 1899, all of said preferred claims mentioned in Exhibit One, hereto attached, aggregating in amount the sum of \$1,555.13, have been duly paid out of said fund of \$3,500.

3. That upon the delivery to your receivers of said fund of \$3,500, with respect to which reference was made in said former report and order of August 1st, 1899, the honorable Assistant Secretary of the Treasury orally relaxed the stringency of the conditions originally imposed, as heretofore reported, to the extent of permitting your receivers to require affirmative proof as to the actual amount of the balance of said preferred claims, the payment of which has been temporarily deferred, your receivers believing that the ends of justice might best be accomplished by requiring that such proof be submitted before the proper officer of this court, for schedule of which see Exhibit 2, attached.

Wherefore your receivers pray that the matter of the determination of the actual amounts due the claimants, referred to in Schedule (A), as attached to your receivers' former report, whose claims remain unpaid, be referred to the auditor of this honorable court for investigation and determination, and that said order of 1899 be so modified as to permit your receivers to further defer the payments thereof until the auditor of this court shall have arrived at a conclusion in the premises.

CHAS. A. DOUGLASS,
CLARENCE A. BRANDENBURG,
THOS. R. RILEY,

Receivers for Baldwin and Peake.

GEORGE H. LAMAR,
Solicitor for Receivers.

Order of Reference to Auditor.

Filed January 13, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

It is by the court, this the 13th day of January, 1900, ordered that this cause be referred to the auditor to take proof, after due

notice by advertisement, of all claims that may be presented against the firm of Baldwin & Peake or either of them, and that said auditor inquire into and report upon the relative rank and priority of said claims, and as to the proper and equitable distribution of the funds and assets belonging to the said firm of Baldwin & Peake, except as to the claims heretofore referred to the auditor by the order passed herein on the 22nd day of December, 1899, the priority of which has heretofore been determined by previous orders of this court, and as to which the said auditor is instructed to ascertain and report the amounts due thereon.

It is further ordered that the claim of Mitchell and Reed, covered by and embraced in a petition of intervention heretofore filed in this cause, be referred to the said auditor, with instructions to take the proof that may be offered for and against the same and report his conclusions in reference thereto.

Further ordered that the petition of Charles A. Douglass and Clarence A. Brandenburg, the majority of the receivers of the said firm of Baldwin & Peake, filed in this cause on the 5th day of January, 1900, whereby it is sought to have Thomas R. Riley, S. Dana Lincoln, and Samuel Ross pay to the said receivers of Baldwin & Peake certain funds alleged to have been in their hands at the time of the granting of the restraining order in this cause and alleged to have been since paid out by them, be likewise referred to the said auditor, with instructions, power, and authority to take testimony in reference thereto and report his conclusions of fact and law thereon.

Further ordered that the defendant Thomas R. Riley, as agent of Baldwin and Peake under a certain power of attorney executed by the said Baldwin & Peake, and the said Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, individually and as a so-called committee, severally and collectively, be required to render an accounting as prayed for in the original and amended bills in this cause, and that the said auditor state the said account in his said report; and the auditor is further empowered and instructed to ascertain and report what compensation, if any, should be paid to the defendant Thomas R. Riley for his services rendered under and pursuant to the power of attorney executed by the defendants Baldwin & Peake and referred to in the pleadings in this cause.

JOB BARNARD, *Justice.*

Final Decree, &c.

Filed January 26, 1900.

In the Supreme Court of the District of Columbia.

WILLIAM C. PEAKE, Complainant,	} Cross-bill in Equity. No.
<i>vs.</i>	
THOMAS R. RILEY ET AL., Defendants,	20227.

This cause coming on to be heard upon the motion in behalf of the complainant in the amended cross-bill to have the decree *pro confesso* made absolute and perpetual by final order, and it appearing to the court that a decree *pro confesso* was duly passed by this court against all of the defendants to said amended cross-bill on the 4th day of December, 1899, and that the allegations made in said amended cross-bill have been duly proved by said cross-com-
 127 plainant herein, it is by the court, this 26th day of January, 1900, ordered, adjudged, and decreed that the said decree *pro confesso* be, and the same is hereby, made absolute and perpetual; and, it appearing that said complainant is entitled to the relief as prayed, it is further ordered, adjudged, and decreed:

1. That the promissory note dated August 11, 1898, signed by the said complainant, William C. Peake, and made payable to the order of and endorsed by William Witthäft be, and the same is hereby, decreed to be an obligation of the firm of Baldwin and Peake.

2. That the copartnership of the firm of Baldwin and Peake be, and the same is hereby, dissolved, and that said amended cross-bill, together with the testimony taken in support thereof, be, and the same is hereby, referred to the auditor of this court, with authority to take the requisite testimony and state the necessary and proper accounts incident to the winding up of the affairs of said firm.

3. That the said defendant, Thomas R. Riley, be, and he is hereby, ordered and directed to discover and render an account in detail before said auditor as to the moneys and other property which have been received by him on account of each and all of the buildings or structures mentioned in said amended cross-bill, and also as to all disbursements made by or under his authority and direction of any moneys belonging to the firm of Baldwin and Peake in connection with each and every of said buildings or structures, and also as to any and every fund or funds which have been so received under the paper-writing executed by Messrs. Baldwin and Peake under date
 128 of August 25, 1898, from any source whatsoever, and of any and every disbursement made by him of funds coming into his hands by virtue thereof or in connection with the said firm.

4. That said power of attorney, dated the twenty-fifth day of August, 1898, be, and the same is hereby, construed so as to entitle the cross-complainant, Peake, to have first paid out of any funds received by the said defendant, Thomas R. Riley, from any particular structure or building all claims for labor and material em-

ployed and expended in and about the completion thereof before any of the funds so derived shall be applied to the payment of any of the general indebtedness of said firm; and in so far as it is found that funds have been diverted by the said Thomas R. Riley from the payments of such labor and material claims as aforesaid, it is hereby ordered, adjudged, and decreed that the said Thomas R. Riley be, and is hereby, held personally liable therefor and charged therewith in his accounts before said auditor; and it is further ordered, adjudged, and decreed that defendants Samuel Ross and S. Dana Lincoln acquired no right in or power under the said paper-writing or power of attorney given by said Baldwin and Peake to said defendant, Riley.

5. That the said defendant, Frank Baldwin, be, and he is hereby, ordered and directed to discover and render an account before said auditor of all moneys received by him from or on the credit of the said firm of Baldwin and Peake prior to the twenty-fifth day of August, A. D. 1898, and also as to the funds or property of value which he has received, directly or indirectly, from defendants Riley, Lincoln, and Ross or either of them, in any capacity whatsoever, or from the firm of Baldwin and Peake, since the twenty-fifth day of August, 1898, and also as to whom any and every part of such amounts he has delivered or paid such property or funds since the formation of said copartnership, and as to what evidence of indebtedness or receipts he has received therefor.

JOB BARNARD, *Justice.*

130

Report of Auditor.

Filed September 27, 1900..

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	No. 20227, Equity Docket 46.
vs.		
THOMAS R. RILEY ET AL.		

By an order passed on the 22nd of December, 1899, this cause was referred to me to take testimony in relation to certain claims enumerated in a temporary report of the receivers, filed on the — of December, 1899, and to report as to the validity thereof.

The following of the claims covered by the said order are sufficiently established by the proof taken in this reference:

On Hog Island Life-saving Station.

W. P. Poole, claim allowed	325.00
----------------------------------	--------

On the Three Other Stations.

Edward Dodge	250.73
Henry Dodge	511.62
Jenkins Paint & Oil Company	175.00
Lyman Robinson	207.47

JAS. G. PAYNE, *Auditor.*

Report of Auditor.

Filed October 19, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	No. 20227, Equity Docket 46.
vs.		
THOMAS R. RILEY ET AL.		

By an order passed on the 22d of December, 1899, this cause was referred to me to take testimony in relation to certain claims enumerated in a temporary report of the receivers, filed on the — of December, 1899, and to report as to the validity thereof.

On the 13th of January, 1900, the court referred this cause to the auditor "to take proof, after due notice by advertisement, of all claims that may be presented against the firm of Baldwin & Peake, or either of them, and that said auditor inquire into and report upon the relative rank and priority of said claims and as to the proper and equitable distribution of the funds and assets belonging to the said firm of Baldwin & Peake, except as to the claims heretofore referred to the auditor by the order passed herein on the 22d day of December, 1899, the priority of which has heretofore been determined by previous orders of this court, and as to which the said auditor is instructed to ascertain and report the amounts due thereon."

It is further ordered that the claim of Mitchell and Reed, covered by and embraced in a petition of intervention heretofore filed in this cause, be referred to the said auditor, with instructions to
 132 take proof that may be offered for and against the same, and to report his conclusions in reference thereto."

"Further ordered that the petition of Charler A. Douglass and Clarence A. Brandenburg, the majority of the receivers of the said firm of Baldwin & Peake, filed in this cause on the 5th day of January, 1900, whereby it is sought to have Thomas R. Riley, S. Dana Lincoln, and Samuel Ross pay to the said receivers of Baldwin & Peake certain funds alleged to have been in their hands at the time of the granting of the restraining order in this cause and alleged to have since been paid out by them be likewise referred to the said auditor, with instructions, power, and authority to take testimony in reference thereto and report his conclusions of fact and law thereon.

Further ordered that the defendant Thomas R. Riley, as agent of Baldwin and Peake under a certain power of attorney executed by the said Baldwin & Peake, and the said Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, individually and as a so-called committee, severally and collectively be required to render an accounting as prayed for in the original and amended bills in this cause, and that the said auditor state the said account in his said report; and the auditor is further empowered and instructed to ascertain and re-

port what compensation, if any, should be paid to the defendant Thomas R. Riley for his services rendered under and pursuant to the power of attorney executed by the defendants Baldwin & Peake and referred to in the pleadings in this cause."

On the 5th of May, 1900, the court, by an order passed, referred to me the petition of Mason Stewart praying that his claim be treated as a preferred claim and paid in full, with directions to find and report whether said prayer should be granted.

133 In accordance with the directions of the order, I caused notice to be published in the newspapers in this city, requiring all parties having claims against the said firm of Baldwin & Peake, or either of them, to present the same, with their proofs, at a time specified in the said notice. I also caused notice to be sent to all counsel of record and all parties who had intervened or filed claims who were not represented by counsel. I then proceeded to hear the parties, receive their claims, and take proof, and after proceeding in this manner for a time, upon the suggestion of counsel, I caused to be published a second notice to the effect that all claims against the said parties, as prescribed by the order of reference, should be presented on or before a specified date, otherwise they would be excluded from consideration. In the progress of the reference a number of additional claims to those appearing of record at the date of the order of reference were presented and made the subject of proof and examination. After a considerable amount of testimony had been taken here, a request was made by counsel representing creditors living in or near the State of Virginia that a commission should be issued for the purpose of having testimony relating to such claims taken at a point convenient for parties, claimant and witnesses; thereupon I filed with the clerk a formal request or certificate, as provided by the rule, upon which the commission was issued and the testimony of parties and witnesses taken in Norfolk, Virginia, upon due notice. This testimony, together with that taken in this office, is returned with this report and with the claims and exhibits presented and filed.

134 Baldwin & Peake were contractors with the United States Government for the construction of four life-saving stations and for work at the Government Hospital for the Insane in this District. They were also contractors with the Commissioners of the District of Columbia for the construction of four school-houses within the District. On the 25th of August, 1898, Baldwin & Peake executed an agreement between themselves appointing Thomas R. Riley their attorney to complete and carry out the contracts with the United States Government for the four life-saving stations, and the contract with the District of Columbia for work on three school-houses in the said District, and to collect any and all monies then payable or that might thereafter become payable on account of the said contracts, and pay all just indebtedness due and incurred in and about the execution of the said contracts. A copy of this agreement is annexed to the report of the receivers filed on the 19th of May, 1899, and is also contained in one or more exhibits filed in this

reference. Under this authority Riley took charge of and prosecuted the work, receiving certain monies from the District authorities and disbursed the same in full with the exception of a small balance remaining in his hands, as appears by an account filed in this proceeding.

Upon petitions filed and proceedings thereon the court on the 7th of March, 1899, appointed two receivers, George H. Lamar and Joseph J. Darlington, who entered upon their duties as such, and on the 14th of March filed a report setting forth the condition of the claim of Baldwin & Peake under their contract with the United States for the three life-saving stations located in the State of Virginia, and setting forth that the acting Secretary of

135 the Treasury, having it in his power to enforce certain penalties against the contractors which would largely diminish the payments to be made for the work, insisted that there should be paid certain claims for labor and materials bestowed upon the said work, and with the understanding and upon the condition that a portion of the monies then due under the contract should be appropriated for that purpose, the said acting Secretary consented to remit the said penalties and to pay the money in two separate checks, one of which of the amount of thirty-five hundred (\$3,500.00) — was to be devoted exclusively to the payment of specified claims for said labor and material, which are enumerated in the receivers' reports.

Subsequently other and permanent receivers were appointed, three in number, whose account as such is referred to me for statement. By their second report filed on the 22d of December, 1899, it appears that they paid a certain portion of the said specified claims for labor, and annexed to their report is a schedule of the claims so paid, as well as of the said claims remaining unpaid. I should state here that upon the report of the temporary receivers of the conditions demanded by the Secretary of the Treasury the court made an order that the said enumerated claims should be immediately paid in full. This order was modified by the order of December 22d, 1899, referring the unpaid portion of the said claims to the auditor for report.

The execution of the first order of reference will appear in the schedules of distribution of the proceeds of construction of the life-saving stations accompanying this report and the explanations
136 pertaining thereto, hereinafter set forth.

Under the reference of the petition of two of the receivers that Messrs. Riley, Lincoln, and Ross pay to the receivers certain funds alleged to have been in their hands at the date of the restraining order and to have since been paid out by them, I have taken testimony which will be filed with this report. After the execution of the power of attorney from Baldwin & Peake to Riley the creditors of the firm, or many of them, expressed in writing their assent to that arrangement and Lincoln and Ross were appointed a committee of the creditors to act in conjunction with him, although he performed the work.

The only substantial disposition by them or him of the funds

after the date of the restraining order was the payment of an account of the White Hardware Company for material furnished to and used in the work on the life-saving stations. Had this account not been paid at that time it would have been allowed and reported in the present report of distribution to be paid by the receivers. Presumably, for this reason, the matter of the petition was not urged or referred to in either of the several oral arguments and briefs submitted by counsel in this reference.

As directed by the order of reference, I have stated the account of Thomas R. Riley, as agent of Baldwin & Peake, under the power of attorney aforementioned. A detailed statement of the items making up this account is filed. There remained in the hands of Mr. Riley the sum of \$1.45, which is applied on account of his compensation. As Mr. Riley handled the funds and made all disbursements on account of the work, there is no account to be stated by Lincoln and Ross.

137 I am instructed to ascertain and report what compensation, if any, should be paid to the defendant Thomas R. Riley for his services rendered under and pursuant to the power of attorney executed by Baldwin & Peake. Mr. Riley took charge of the work at a critical period, procured funds required for its prosecution on the promissory notes of himself and the members of the committee of the creditors and by collections of monies becoming payable for the work as it progressed, and gave to the subject-matter of his agency a substantial portion of his time and service until the appointment of the temporary receivers. He received and disbursed over twenty-nine thousand dollars, the disbursement of that sum being largely in detail, as will appear by his itemized account. The power of attorney does not prescribe or provide for his compensation, but there was no agreement or understanding that he should not claim and receive such as would be just in view of the service and responsibility. In view of these facts I would be inclined to report an allowance of the maximum commissions upon his receipts, but for other existing conditions which I think should be considered: First, of the funds in the hands of the receiver but a comparatively small portion resulted from the work on the school-houses—work which commanded much more than two-thirds of his time and labor as compared with the other contracts; second, he is one of the present receivers and will share in the compensation allowed to them.

Under all the circumstances I am of the opinion that eight per cent. upon the monies passing through his hands would be fair and reasonable.

138 Referring to the petition of Mason Stewart that his claim to be paid in full, I am unable to find any sufficient reason for giving to this claim a preference over others of the same degree of merit and right. As my report of distribution, however, will satisfy this claim and other similar claims in full, I need not discuss the matter further.

In Schedule A herewith I have taken up the funds delivered by

the temporary receivers to the accounting receivers, and, after allowing commissions to the latter, have applied the remainder toward the compensation of Thomas R. Riley. This fund being primarily derived from the work on the school-houses and that work having taken more than two-thirds of the service rendered by him in the premises, I think his compensation has a paramount claim on the fund.

This leaves for further accounting and distribution the funds received from the Government in part for the construction of the life-saving station at Hog island, Virginia, and in part for the construction of the three other stations. In the settlement made between the receivers and the Department of the Treasury, the latter imposed as a condition the application of the funds delivered to the receivers to the just claims of parties who furnished material or performed work. The fact that only certain claims were enumerated for *immediate* payment should not be taken as evidence of an intention to exclude all others of like character. The enumerated claims had been brought to the attention of the department and a considerable portion were for personal labor and of small amount.

Subsequently the requirements of immediate payment of
139 some of the larger claims (mainly for materials furnished) was modified to allow inquiry as to their validity, but not disturbing their right of lien when established.

The claim of the laborer and the materialman upon the proceeds of the work to which his labor or material has contributed is not only recognized and often enforced by the Government, but is supported by the general doctrine of equity, and I have adopted it as the rule of distribution in this proceeding. These two funds are therefore treated separately, and as they should bear proportionate shares of costs and charges common to both, I have first stated these in Schedule E. In addition to the costs of suit, the balance of compensation to Thomas R. Riley, costs and allowances of temporary receivers per order of the court, and costs of this reference (including depositions at Norfolk, Virginia) I have reported an allowance to Douglass & Douglass, solicitors, of one thousand dollars as counsel fee for services rendered in aid of the fund. Mr. Charles A. Douglass, Senior, of counsel, in addition to service in the cause generally has been constant in attendance in this reference and the investigation of claims presented, as will appear from the voluminous record of this proceeding. I think the sum named is only a moderate compensation for his service in the premises.

The aggregate of these common costs and allowances is apportioned to the separate funds and carried to the respective schedules.

In this connection a claim is presented by William Witthaft against the receivers for an alleged occupation by them of premises No. 307 B street, owned by him. These premises had been occupied by

Baldwin & Peake, and at the time of the appointment of the
140 first receivers were occupied by the firm or by Peake. For all that appears here, they are still so occupied, but there is not the slightest proof that they were at any time occupied by either

of the receivers or under their direction or authority. Some attempt was made to charge the receivers with knowledge of Peake's occupancy, but it is difficult to see how that fact, if established, could charge them with the rent. They did not use the premises, nor had they possession, actual or constructive, of any effects on the premises. I find nothing in the case to warrant the allowance of the claim.

In Schedule B I have stated the distribution of the proceeds of the construction of the three life-saving stations after allowance of receivers' commissions and the proportion of common costs and allowances.

At this point it is convenient to refer to the allowance of compensation to the receivers. The history of this proceeding shows that they were charged with more than ordinary care and responsibility. Their successful efforts to adjust the differences between the contractors and the Government and other special services disclosed by their reports, supplemented by a brief statement in this reference, justify the allowance of the maximum compensation.

Of the claims which are allowed only the following are the subjects of controversy, the others being without objection at the close of the reference :

Of the claims of Jonathan Woodhouse, for lumber, &c., furnished to the three life-saving stations, is objected to in part. It is contended that some of the lumber was condemned and that other was not delivered at the place agreed upon.

141 I find upon the proof submitted that no part of the material charged in the account was condemned or rejected, and there is no sufficient proof of an agreement by Woodhouse to deliver the special material at False cape at a given time, or that he was in any way responsible for the emergency which necessitated its transportation by wagon from another landing place to False cape. The claim as presented is fully sustained by the evidence.

George L. Crow presents a claim for 175.92, but the evidence shows that his agreement was with William J. Brent and not with Baldwin & Peake. Brent was a subcontractor, and, after partially executing his contract, the firm were obliged to take the work into their own hands or that of their agent, Riley. Two items of Crow's claim were furnished afterwards, and these are allowed.

As to claims presented by John O. Gammage and Herman Drinkwater, the evidence is that the material was furnished and the work done for the subcontractor, Brent, and the credit given to him and not to Baldwin & Peake.

The John L. Roper Lumber Company presents a claim for material furnished ; to which the objection is made that Baldwin & Peake did not order the material and it was not supplied upon the credit of the firm. The testimony of Mr. Roper is that he refused to furnish the material to Brent, the subcontractor, or on his credit, and that Peake in person agreed that his firm would pay for the material, or see that it was paid for. Peake, in his testimony, expressly denies that he ever had any conversation with Roper, or had ever seen him

until at the taking of the testimony in Norfolk. Brent was produced as a witness and testified that he was present at the interview related by Roper, and that Peake told Roper that he would pay him eighty per cent. every thirty days, and that he would get the balance when the work was finished. The prevailing proof is with the claimant, and although it is contended that, if true, it is the case of an undertaking to answer for the debt of another and void under the statute of frauds, I am of the opinion that Peake's agreement was an original and not a collateral undertaking. I have therefore allowed the claim as presented.

After distribution to the claims of parties who furnished material and labor in the construction of the life-saving stations, there remains a balance of each of the two funds. It appears in evidence that, finding it necessary to raise funds for the prosecution of the work on the life-saving stations, Mr. Peake, in behalf of his firm, applied to Mr. William Witthaft, who endorsed the note of the firm in consideration of an agreement that the money realized upon the note should be used for the said work, and that the note should be paid or the amount refunded to Witthaft from the proceeds of the work. A portion of the money realized was used upon the Hog Island station and a portion upon the three other stations. I am of the opinion that these facts amount to an equitable assignment by Baldwin & Peake, but not to displace the liens of the other claims enumerated in my schedules of distribution.

\$350.00 of the funds so furnished by Witthaft is traced into use upon the construction of the Hog Island station, and that sum is appropriated from the proceeds of that work.

143 The remainder of the funds furnished by him was used in the construction of the three other life-saving stations, and the net proceeds of this work remaining after distribution to preferred claims is appropriated for his partial reimbursement, it not being sufficient to satisfy his claim in full.

As to the unsatisfied balance he becomes a general creditor.

Further distribution of the funds is stated in accordance with these views.

A claim is presented in behalf of Mitchell & Reed arising under the following circumstances: This firm was a creditor of Baldwin & Peake for material furnished for the construction of the school-houses. The contract for this work contained the following provision: "Pay of workmen.—Contractors will pay the workmen who shall be employed by them upon the work under their contract punctually, in cash current, and not in what is denominated store pay or orders, and will, from time to time and as often as may be required by the Commissioners, furnish satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required; and if such evidence is not furnished, such sum or sums as may be necessary for such payment, may in the discretion of the Commissioners, be retained until such claims shall be fully satisfied."

On the occasion of a payment due the firm on school-house work, the auditor of the District insisted as a condition to the delivery of

the checks for the payment that the amount of the claim of Mitchell & Reed should be left in his hands. Subsequently the claimants brought suit before justice of the peace and obtained judgment, upon which a writ of attachment was issued and served on the said District auditor, who answered that as auditor of the District he held \$251.41 on account of the claim of Mitchell & Reed, subject to judicial determination as to payment. The matter being reported to this court by the first receivers, an order was made requiring the said auditor to deliver the money to them. The matter being by him brought to the attention of the Commissioners, they *advised* (the term used in the testimony) that the money be so delivered, which was done. It is conceded by counsel that, as a general rule, funds in the possession of the municipality are not subject to attachment, but it is urged that this exemption can be waived and that the proceedings of the District auditor in the premises constitute such a waiver. As all process against the District must be served on the Commissioners, service upon their auditor, even if the writ would lie, could not be effective. As the writ should be against the Commissioners, they alone could waive the exemption. They had no occasion to do so, and, so far as appears here, they had no knowledge of the proceeding until the time when they advised the delivery of the money to the receivers. This clearly was not a waiver of the immunity.

As the writ of garnishment was not effective, it may be necessary to consider whether the claimants acquired any right of priority or lien by the deposit of the money with the District auditor. It was not a voluntary deposit, but was exacted as a condition of the delivery of a payment due Baldwin & Peake for work performed under their contract. The provision of the contract upon which counsel relies in his brief, and which is set forth above, gives the Commissioners discretionary power to retain such sum as may be necessary for the payment of all persons who have done work or furnished material until such claims shall be fully satisfied. It evidently does not intend the payment of one such claim to the prejudice of others equally entitled. The Commissioners have power, in the conditions set forth in the contract provision, to hold the money as a trustee, or, to bring the illustration more nearly home, to hold it as the receivers hold the funds in this cause, for the benefit of all just claims for labor performed and material furnished upon the contract work. The result is that these creditors are here with the same rights, and only the same, as others having established claims for material or labor.

In Schedule A I have stated an account of the fund transferred by the former receivers to the accounting receivers. After allowing commissions to the latter, the remainder is applied on account of the compensation of Thomas R. Riley, as agent and attorney, as hereinbefore set forth.

Schedule B contains a statement of account of the receivers of the funds derived from the three life-saving stations, charging the receivers with the amounts received from the Treasury on account of this work, and allowing commissions, a proportion of the common

costs and allowances, and claims paid by the receivers under the agreement with the Treasury Department and the order of court. Distribution is then made to four claims which were included in the agreement with the Treasury Department and the original order of court. The latter order was modified and these claims referred to me to ascertain their validity. Pending the preparation of this report, at the request of counsel representing these claims, I filed a preliminary report, which has since been confirmed by the court and disposes of these claims. Their aggregate amount is therefore deducted from this fund, and the balance is distributable to the other claims for material and work bestowed upon these constructions, in accordance with the views expressed in this report.

Schedule C contains the account of the receivers of the proceeds of the work upon the life-saving station at Hog island. This fund is charged with commissions of the receivers and a proportion of the common costs and charges and an amount distributed in my preliminary report to one of the claimants included in the Treasury agreement and the order of the court thereon. The remainder is distributable to the additional claims for material and work used upon this station as established in the proof here, or, as in the case of the claim of John N. Hart, by stipulation of the parties and decree of the court. I then apply so much of the remainder as is requisite to refund to William Witthaft money realized upon his endorsement and used to pay for labor and matériel furnished to this work.

There still remains a balance of the proceeds of this work. In testimony here the witness Peake, a member of the firm, states that of the proceeds of the work upon the Government Asylum for the Insane the sum of \$1,425.00 was used in paying for labor and material supplied to the Hog Island Station work, and it is suggested by counsel that the remainder of this fund should be transferred to the account of the said asylum work for the benefit of the parties having claims for labor and material furnished to that work. On the other hand, the fund is claimed in behalf of parties having claims against the firm for work done upon any or all classes of construction. I am unable to find in the proof sufficient to trace this money directly from the hands of the Government disbursing it in payment for the asylum work to its use in connection with the work upon the Hog Island life-saving station.

It appears that the said sum was due the firm of Baldwin & Peake for work upon the asylum, and was actually delivered into the possession of the firm, or of Peake as its representative member. In such possession it was the money of the firm unfettered by any condition as to its disposition and unimpressed with any trust in favor of any claim or class of claims. So far as it appears in evidence, there was no such segregation of this fund from other money in possession of the firm as entitled it to be considered in trust as claimed in behalf of the asylum-work creditors.

In accordance with these views I have, in Schedule D, taken up this remainder of the fund arising from the Hog Island work, and stated its distribution to the parties having established claims against the firm for labor performed and material furnished to and upon the other classes of work described and set forth in the contracts of the firm with the Government and with the Commissioners of the District of Columbia, including both work upon the asylum and that upon the several school-houses.

At least two claims are presented here for work done and material furnished for the construction of a post-office building
148 at Allegheny, Pa. This work is not mentioned in any of the pleadings or any proofs taken in the cause excepting that offered to establish the items of the claims, and no monies as proceeds of that work have come into the hands of either of the receivers or to the hands of Mr. Riley under his power of attorney. There is no fund here, therefore, from which these claims could be satisfied.

JAS. G. PAYNE, *Auditor.*

October 15, 1900.

149

SCHEDULE A.

Account of Charles A. Douglass, Clarence A. Brandenburg, Thomas R. Riley, Receivers.

DR.

To received from temporary receivers..... \$1,683.70

CR.

By commissions to accounting receivers..... 168.37

\$1,515.33

To Thomas R. Riley, allowance of commissions on 29,120.20 received and disbursed, at 8 per cent.....

2,334.72

Less balance in his hands.....

1.45

2,333.27

Above balance applied.....

1,515.33

1,515.33

Balance to Schedule E.....

817.94

JAS. G. PAYNE, *Auditor.*

150

SCHEDULE B.

Account of the Receivers of the Funds Received from Construction of Life-saving Stations at Caffey's Inlet, False Cape, and Dam Neck.

Amount received from the United States

Treasury on account of this work.....	11,888.00
To commissions to receivers.....	1,188.80
portion of costs, expenses, and allowances, per schedule.....	2,215.93
claims paid by receivers per order of court.....	1,555.13
paid W. J. Chappel.....	69.89
	<hr/>
	5,029.75
Balance for distribution.....	6,858.25
To Edward Dodge, preferred claim	250.73
Henry Dodge, preferred claim.....	511.62
Jenkins Paint & Oil Company, preferred claim	175.00
Lyman Robinson, preferred claim	207.47
	<hr/>
	1,144.82
	<hr/>
	5,713.43
James M. Stewart, account for labor	51.00
A. E. Warner, account.....	1,006.84
Robert Wolf.....	92.87
John H. Cross.....	53.00

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To Edward B. Hughes, Jr.....	220.00
Southern Oil & Supply Co., for material...	218.17
H. B. Davis & Company, the same	234.50
Jonathan Woodhouse, the same	1,278.35
White Hardware Company, the same.....	270.50
John L. Roper Lumber Company, the same	495.00
George L. Crow.....	34.65
	<hr/>
	3,954.88
	<hr/>
	1,758.55
William Witthoft, on account of \$2,552.00 advanced to pay for material and labor.....	1,758.55

JAS. G. PAYNE, Auditor.

152

SCHEDULE C.

Account of Receivers of Funds Received from Construction of Life-saving Station at Hog Island.

Amount received on account of this work.....	5,142.42	
To commissions of receivers.....	514.24	
portion of costs, expenses, and allowances, per Schedule E.....	1,136.81	
	<hr/>	1,651.05
		<hr/>
		3,491.37
distribution to W. P. Poole in first report of auditor...		325.00
		<hr/>
		3,166.37
John N. Hart, per stipulation and decree...	1,850.00	
William P. Snider, for labor.....	22.34	
Marion Snider, for labor.....	76.50	
D. M. Weeks	112.50	
	<hr/>	2,061.34
		<hr/>
		1,105.03
William Witthafft, money advanced to pay for labor and material used in this construction.....		350.00
		<hr/>
Balance to Schedule D.....		755.03

JAS. G. PAYNE, Auditor.

153

SCHEDULE D.

Distribution to the General Creditors of the Firm of Baldwin & Peake.

Balance of fund from Schedule C.....	755.03
To Evening Star, publishing auditor's notices.....	18.20

736.83

	Amount of claim.	Amount of dividend.
To William Witthafft, account for rent.....	300.00	
Balance of note.....	793.45	26.54
Thomas R. Riley, balance of account.....	3,743.02	90.83
Alfred Richards Brick Co., account.....	3,477.85	84.43
Barber & Ross, balance of account	4,398.03	106.77
Belt & Dyer, account.....	113.57	2.77
Brown, Thomas, account.....	128.30	3.12
Bennett, James, account	676.78	16.49
Berry Brothers, account.....	84.00	2.05
Clark Brothers, account	76.20	1.86
Cooksey, Charles W.	197.00	4.80

	Amount of claim.	Amount of dividend.
Conkling, Armstrong, Terra Cotta Co.....	190.00	4.64
Corning, John H., account	5.77	.14
Central Fire Proofing Co., account	65.00	1.58
Dennison, William E., services (note).....	56.95	1.39
Dodson, J. McL., account	199.75	4.87
Dow Wire Works, account	179.00	4.36
154		
Darlington, J. J.....	50.00	1.32
Excelsior Terra Cotta Co.	1,125.00	27.31
Edgefield & Nashville Manufacturing Com- pany	868.53	21.08
Fanning, Joseph.....	119.02	2.90
Gray, E. N., & Company.....	439.70	10.72
Gilbert, H. P.	101.82	2.48
Garthe, William.....	1,030.00	25.01
King & Bro., Charles W.....	50.00	1.22
Lathrop-Hatton Lumber Co.	139.83	3.41
Lord, John B.	236.40	5.77
Littlefield, Alvord & Co.....	453.11	10.99
Martin & Brother.....	60.00	1.47
McQuade, B.....	62.70	1.53
Mitchell & Reed	251.41	6.13
Northwestern National Insurance Company...	25.00	.62
Nelms & Company.....	375.11	9.00
Potomac Hydraulic Cement Co.	179.21	4.37
Perth Amboy Terra Cotta Co.	1,075.00	26.09
Philadelphia and Boston Face Brick Company..	289.11	7.04
Reilly, Hugh	307.73	7.46
Reavis, Albert F.....	253.35	6.18
Rothwell, Richard.....	385.74	9.36
Smith, Charles G., and Son	121.92	2.97
Somerville, Thomas, & Sons.....	929.08	22.58
155		
To Salem Bedford Stone Co.....	367.25	8.92
Wilson, James G.	270.00	6.59
Walker, J. T., Sons	72.08	1.76
Wolf, Robert	92.27	2.25
West, William H., & Bro.....	1,334.20	32.37
Webb, A. L., & Company	662.00	16.07
Walker, W. T., & Company	191.43	4.67
Weller, W. F.	431.82	10.48
Washington Slate Company.....	97.09	2.36
Woodward Lumber Company	2,981.65	72.35
J. Frank Campbell	41.91	1.02
E. B. Hughes	140.00	3.42
Fractions92

736.83

JAS. G. PAYNE, Auditor.

156

SCHEDULE E.

Account of Costs, Expenses, and Allowances to be Apportioned.

Costs of suit.....	175.30
Commissioners, for depositions taken in Norfolk, Virginia...	109.50
Balance of allowance to Thomas R. Riley (Schedule A)....	817.94
Douglass & Douglass, allowance of counsel fee.....	1,000.00
George H. Lamar and S. T. Thomas, costs, expenses, and fees for preparation of suit against John N. Hart <i>et al.</i> by order of court	500.00
Auditor's fees	500.00
Testimony before the auditor.....	250.00
	<hr/>
	3,352.74
	<hr/>
To Schedule B, Caffey's inlet, &c.	2,215.93
" C, Hog island	1,136.81
	<hr/>
	\$3,352.74

JAS. G. PAYNE, *Auditor.*

157

SCHEDULE F.

Account of Thomas R. Riley under Power of Attorney.

DR.

To received from Commissioners of the District of Colum- bia on account of construction of Peabody school annex	9,561.78
ditto, Eckington school-house	5,326.61
ditto, Toner school-house	12,580.81
proceeds of notes of Riley, Ross, and Lincoln, dis- counted.....	1,600.00
amounts returned by A. M. Poynter and others	114.75
	<hr/>
	29,183.95

CR.

By paid notes of Riley, Ross, and Lincoln, with interest.....	1,602.67
disbursed in payments for material and labor, per itemized account herewith.	27,579.83
	<hr/>
	29,579.83
Balance in hand, carried to Schedule A	1.45

JAS. G. PAYNE, *Auditor.*

158 EXTRACTS FROM TESTIMONY FILED BEFORE AUDITOR.

Filed October 19, 1900.

Testimony of William C. Peake.

The witness is recalled to testify in the matter of the claim of William Witthaft.

By Mr. LAMAR:

Q. Will you look at the note I hand you, signed W. C. Peake and drawn to the order of William Witthaft, and state the circumstances under which the original obligation on which the note is based was made? A. This was the renewal of two notes we had gotten discounted at the National Capital bank.

Q. Under what circumstances was the endorsement of William Witthaft obtained to the original notes? A. We needed money very badly in the prosecution of the work on the life-saving stations, and on two different occasions I got him to endorse notes for me, and when they came due we had not got the money and the two notes were merged in one with the understanding that when I got the money from the life-saving stations he was to be paid.

Q. How far had the work progressed on Dam Neck, False Cape, and Caffey's Inlet stations at the time of the endorsement of William Witthaft was obtained to the original notes? A. One station was completed, another was very nearly completed, and the other one about half completed.

Q. About what amount up to that time had been paid to the sub-contractors at the time the endorsements on the original notes had been made? A. 8,000.00 or 10,000.00.

Q. Were these facts explained to Mr. Witthaft before his endorsements were obtained? A. Yes, sir.

Q. What, if any, undertaking was made by you on behalf of the firm of Baldwin & Peake, if any, with respect to the payment of said notes, out of the proceeds arising under the life-saving stations contracts? A. Well, I told him that just as soon as we got the money from the life-saving stations we would take up this note; I told him that frequently.

Q. And that statement was made prior to his endorsement? A. Yes, sir.

Q. Was any such representation made to the bank? A. Yes, sir; when I took the note around to the bank I told the president we had a great deal of money coming from the life-saving stations, which I would certainly pay this note out of.

Q. State, if you know, in what way the fund derived by your firm from those original notes was expended. A. It was expended on the life-saving stations; sent down there to be paid by the foreman.

Q. All of it? A. Yes, sir.

160 Q. What, if anything further, was said to Mr. Witthaft by or on the part of the firm of Baldwin & Peake at the time his original endorsements to the original notes were severally obtained? A. I told him that I wanted this money for use on the life-saving stations, and just as soon as we got the payments on the life-saving stations I would pay him back.

By Mr. DOUGLASS:

Q. Was that all that was said between you and Mr. Witthaft on the subject? A. Yes, sir.

* * * * *

W. C. PEAKE, having been recalled, testified as follows:

By Mr. LAMAR:

Q. In the matter of the claim of William Witthaft, in your direct examination when you were on the stand last, you stated that the conversations related above were all that passed between you and Mr. Witthaft on the subject. Did you mean by this answer to be understood as undertaking to give the exact words of the conversation?

Mr. Douglass objects.

By Mr. DOUGLASS:

Q. In the conversation you had with Mr. Witthaft prior to his endorsing these notes, as nearly as you can, give the exact language which you used to him in connection with the life-saving station fund. A. We needed money to pay off on the life-saving stations and I was—I asked him if he would endorse these notes for me. He hesitated a little while, and I then explained the 161 condition of the life-saving stations, and I told him that if he would endorse I would pay him from the money I got from the life-saving stations. He made me go into an explanation about how near the stations were completed and when I expected it and how I was getting along with it. I explained how far we was advanced, how soon I expected it to be done, and when I expected the money, and made him a positive promise to give him the money out of the money received.

Q. Did you agree to pay him out of the first money you should get from any source? A. No, sir; but out of this particular fund.

Q. Out of this fund for the life-saving stations? A. Yes, sir.

By Mr. LAMAR:

Q. Has there been any change in Mr. Witthaft's physical condition since you testified before? A. Yes, sir; he is in a very feeble condition. He cannot go out of the house. He is about 82 years old and a cripple.

By Mr. DOUGLASS:

Q. Where was this particular money expended; on what particular life-saving stations? A. On the life-saving stations.

Q. On what particular ones did this money go? A. Part to all four of them.

Q. When in part to all four? A. Yes, sir.

By Mr. LAMAR:

Q. What part of this money, if any, was expended on Hog island?

A. On May 13th I sent 350.00 for the pay-roll of Hog island.

162 Q. Do you know of your own knowledge that all this money was expended on these life-saving stations? A. I do.

* * * * *

THOMAS R. RILEY, having been recalled, testifies as follows:

Q. Have you produced your vouchers as attorney of the committee? A. Yes, sir; I have them in this package. (Produces package.)

Q. What is the other package you have in your hand? A. A lot of miscellaneous things.

Q. In regard to Baldwin & Peake matters? A. Yes, sir.

Q. What time and work did you devote to the school-houses after you were appointed attorney and down to the time permanent receivers were appointed? A. I was giving a general superintendence of the work, receiving money, paying out money, making contracts, buying material and anything pertaining to the finishing up of their contracts.

Q. Did you go upon the works? A. Yes, sir.

Q. How frequently? A. Some time every day for days, sometimes once or twice a week.

Q. Did you continue to do that? A. Yes, sir; until all of their contracts were completed.

163 By Mr. DOUGLASS:

Q. You say you visited the work; what work was it you visited? A. The school-houses.

Q. How many school-houses were in process of construction after you got the power of attorney? A. Three—the Eckington, Toner, and Peabody. The Eckington was pretty nearly completed; I was out there several times.

Q. Did you ever visit the life-saving station work? A. Never the stations, only as far as Norfolk.

Q. How often did you go to Norfolk? A. I think twice.

Q. Wasn't there an agreement between the committee, composed of Mr. Riley, Mr. Lincoln, and Mr. Ross on the one side, and the creditors in Washington on the other, that the committee was to serve without compensation? A. I don't remember that; my claim is under the power from Baldwin & Peake.

Q. And not under your capacity as committee? A. No, sir.

Mr. Thomas states that Mr. Riley claims ten per cent. on the amount collected—29,000.00.

By Mr. DOUGLASS:

Q. You commenced under the power of attorney, in August, 1898.

A. I think so; yes, sir.

Q. Did you do any work with reference to the life-saving stations? A. In what way?

Q. You testified that you went to Norfolk twice. A. I went
164 to Norfolk with the view of going to the life-saving stations, but they were too far away; I didn't go. I simply made contracts and bought material for the completion of those stations.

Q. Can you estimate what proportion of your time was taken up in this matter of the life-saving stations? A. As much of my time was given to Baldwin & Peake's business as I gave to my own. I could not say how much time. I was engaged every day, in some way or other, in Baldwin & Peake's matters.

Q. You don't mean to say it occupied half your time? A. I mean that I gave it as much time as I gave my own business. It seemed to me that every day somebody was inquiring about Baldwin & Peake's affairs.

Q. Your principal attention was given to the school-houses here in Washington? A. The school-houses and life-saving stations, too. I was sending them material and money—everything necessary for the completion of them.

Q. You collected how much money from the school-houses? A. I collected all the money from the school-houses.

Q. Aggregating how much? A. About 29,000.00.

Q. You collected none from the life-saving stations? A. None except what the receivers had in their hands.

Q. Can you recollect now anything about the resolution passed at a creditors' meeting that this committee should work without compensation? A. Now, at that meeting—it occurred in my office—
165 there were so many things spoken of that night; that may have been one of them.

Q. When was it that resolution passed? A. I don't know that it was passed. I think Mr. West may have suggested something of that sort.

Q. Isn't it your recollection that such a resolution was passed? A. No, sir; it is not my recollection.

Q. At the creditors' meeting to which you refer, that took place in your office, was something said as to the committee getting compensation? A. Yes, sir.

Q. As near as you can, give me the time that matter was discussed. A. I believe I don't understand the question.

Question repeated. A. I don't know that I can tell you; there were a great many there that night, and each man had his own idea.

Q. That meeting took place a short time after the power of attorney was executed? A. Yes, sir; a few days after. I didn't know the meeting was going to take place until probably two hours before the time set. I met several gentlemen on the Avenue that afternoon and they spoke to me of it.

Q. After that meeting of the creditors, appointing the committee, didn't the committee have charge of the affairs of Baldwin & Peake?

A. Well, I don't know that they did.

Q. Isn't it true that you acted as treasurer of the committee after the meeting referred to? A. I signed the checks as treasurer; yes, sir.

Q. After the appointment of this committee by this credit-
166 ors' meeting, didn't the committee meet from time to time and act on all accounts and affairs of Baldwin & Peake? A. For a little while; yes, sir.

Q. Did they not continue to do it throughout the period of time from that date until the receivers were appointed? A. I don't think so.

Q. Do you remember whether or not you were elected treasurer of the committee? A. Elected treasurer? No, sir.

Q. Appointed? A. No, sir; the committee were acting for the creditors and I was acting for Baldwin & Peake.

Q. Didn't you keep an account in bank as treasurer? A. Yes, sir; until the account of Baldwin & Peake was attached; then at the suggestion of the cashier of the bank I changed the account from Thomas R. Riley, treasurer, to Riley, Lincoln, & Ross.

Q. Then the first period of the time the account was kept by you as treasurer? A. Yes, sir.

Q. And the last part of the time kept in the name of Riley, Lincoln, and Ross? A. Yes, sir.

Q. Then you kept it as treasurer of the committee of Riley, Lincoln, and Ross? A. It was only kept that way so that it would not conflict with my own account.

Q. What did Mr. Lincoln and Mr. Ross do after the ap-
167 pointment of the committee? A. Nothing more than to call at my office and advise as to things.

Q. Did you do all of the work of the committee in this matter? A. Yes, sir; I think so.

Q. After the appointment of the committee did they have entire charge of the affairs of Baldwin & Peake? A. I hardly know how to answer that question; they were at my office probably once a day for several days; then they would not come. They would come along about four o'clock in the afternoon and stay for a little while.

Mr. Riley submits the package of vouchers in evidence in connection with his account as attorney.

168

Clause from School-house Contracts.

"Pay of workmen.—Contractors will pay the workmen who shall be employed by them upon the work under their contract punctually, in cash current, and not in what is denominated store pay or orders, and will, from time to time, and as often as may be required by the Commissioners, furnish satisfactory evidence that all persons who have done work or furnished materials have been paid as herein required; and if such evidence is not furnished, such sum or sums as may be necessary for such payments may, in the discretion of the Commissioners, be retained until such claims shall be fully satisfied."

169

Bond.

Know all men by these presents that we, Frank Baldwin and William C. Peake, as principals, and Richard Rothwell and Samuel Ross, as sureties, all of the District of Columbia, are held and firmly bound unto the United States of America in the sum of twenty-five thousand two hundred (25,200) dollars, lawful money of the United States of America, to be paid to the said United States; for which payment, well and truly to be made, we and each of us do bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this twenty-second day of March, A. D. one thousand eight hundred and ninety-eight.

Whereas the above-bounden Frank Baldwin and William C. Peake, by an instrument in writing under their hands and seals, bearing even date with these presents, have contracted with the District of Columbia to furnish all necessary labor and materials, except as therein otherwise provided, and in a good, firm, and substantial manner, in strict accordance with the terms, conditions, and provisions of the foregoing contract, execute the work of constructing an eight-room school building and retaining wall for the District of Columbia on the southeast corner of 24th and F streets northwest, in the city of Washington, District of Columbia, as more fully set forth in the foregoing contract, and on the conditions and for the considerations in the foregoing contract mentioned and contained or referred to therein:

170 Now, therefore, the conditions of the foregoing obligation are such that if the said Frank Baldwin and William C. Peake shall strictly and faithfully perform, to the satisfaction and acceptance of the Commissioners of the District of Columbia, the work to be done by them in accordance with the stipulations of said contract, and shall save harmless from and indemnify the District of Columbia for any and all claims, suits, costs, charges, counsel fees, and judgments for damages to which said District may be subjected on account of any accident to persons, property, or premises after the commencement of the work and prior to its completion and acceptance, and pay the same, and in every respect fully comply with the provisions and requirements of said contract, then this obligation to be void; otherwise to remain of full force and virtue.

FRANK BALDWIN.

WM. C. PEAKE.

RICHARD ROTHWELL.

SAMUEL ROSS.

[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

Signed and sealed in the presence of—

A. Y. LAKENAN, as to all.

R. M. BARR, “ “ “

Approved:

JOHN W. ROSS,

JOHN B. WIGHT,

W. M. BLACK,

Commissioners, D. C.

171

Bondsmen's Oath.

DISTRICT OF COLUMBIA, }
 County of Washington, } ss:

I, Richard Rothwell, being duly sworn, depose and say that I reside in the District of Columbia; that I am a freeholder therein, and that the value of my real estate, over and above all debts, liabilities, and exemptions, is over thirteen thousand dollars (\$13,000.00), and that I am fully responsible for the amount of my obligation in the foregoing bond by me executed.

RICHARD ROTHWELL.

Sworn and subscribed this twenty-second day of March, 1898, before me—

[SEAL.]

ABNER Y. LAKENAN,
 Notary Public.

DISTRICT OF COLUMBIA, }
 County of Washington, } ss:

I, Samuel Ross, being duly sworn, depose and say that I reside in the District of Columbia; that I — a freeholder therein, and that the value of my real estate, over and above all debts, liabilities, and exemptions, is over thirteen thousand dollars (\$13,000.00), and that I am fully responsible for the amount of my obligation in the foregoing bond by me executed.

SAMUEL ROSS.

Sworn and subscribed this twenty-second day of March, 1898, before me—

[SEAL.]

ABNER Y. LAKENAN,
 Notary Public.

172

Bond.

Know all men by these presents that we, Frank Baldwin and William C. Peake, as principals, and Richard Rothwell and Samuel Ross, as sureties, all of the District of Columbia, are held and firmly bound unto the United States of America in the sum of twenty-five thousand five hundred (25,500) dollars, lawful money of the United States of America, to be paid to the said United States; for which payment, well and truly to be made, we and each of us do bind ourselves and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this twelfth day of February, A. D. one thousand eight hundred and ninety-eight.

Whereas the above-bounden Frank Baldwin and William C. Peake, by an instrument in writing under their hands and seals, bearing even date with these presents, have contracted with the

District of Columbia to furnish all necessary labor and materials, except as therein otherwise provided, and in a good, firm, and substantial manner, in strict accordance with the terms, conditions, and provisions of the foregoing contract, execute the work of constructing an eight (8) room school building on the west side of Sixth street between B and C streets northeast, in the city of Washington, District of Columbia, as more fully set forth in the foregoing contract, and on the conditions and for the considerations in the foregoing contract mentioned and contained or referred to therein :

173 Now, therefore, the conditions of the foregoing obligation are such that if the said Frank Baldwin and William C. Peake shall strictly and faithfully perform to the satisfaction and acceptance of the Commissioners of the District of Columbia the work to be done by them in accordance with the stipulation of said contract, and shall save harmless from and indemnify the District of Columbia for any and all claims, suits, costs, charges, counsel fees, and judgments for damages to which said District may be subjected on account of any accident to persons, property, or premises after the commencement of the work and prior to its completion and acceptance, and pay the same, and in every respect fully comply with the provisions and requirements of said contract, then this obligation to be void ; otherwise to remain of full force and virtue.

FRANK BALDWIN.
WM. C. PEAKE.
RICHARD ROTHWELL.
SAMUEL ROSS.

[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

Signed and sealed in the presence of—

A. Y. LAKENAN, as to all.

R. M. BARR, “ “ “

Approved :

JOHN W. ROSS,

JOHN B. WIGHT,

W. M. BLACK,

Commissioners, D. C.

174

Bondsmen's Oath.

DISTRICT OF COLUMBIA, }
County of Washington, } ss :

I, Richard Rothwell, being duly sworn, depose and say that I reside in the District of Columbia ; that I am a freeholder therein, and that the value of my real estate, over and above all debts, liabilities, and exemptions, is over thirteen thousand dollars (\$13,000), and that I am fully responsible for the amount of my obligation in the foregoing bond by me executed.

RICHARD ROTHWELL.

Sworn and subscribed this 10th day of Febr'y, 1898, before me—
 ABNER Y. LAKENAN,
 [SEAL.] *Notary Public.*

DISTRICT OF COLUMBIA, }
 County of Washington, } ss:

I, Samuel Ross, being duly sworn, depose and say that I reside in the District of Columbia; that I am a freeholder therein, and that the value of my real estate, over and above all debts, liabilities, and exemptions, is over thirteen thousand dollars (\$13,000), and that I am fully responsible for the amount of my obligation in the foregoing bond by me executed.

SAM'L ROSS.

Sworn and subscribed this 12th day of February, 1898, before me—
 ABNER Y. LAKENAN,
 [SEAL.] *Notary Public.*

175

Memorandum.

The claim of the Alfred Richards Brick Company filed with the report of auditor missing from files.

176

Claim of James Bennett.

WASHINGTON, D. C., August 20th, 1898.

Mr. Baldwin & Peake to James Bennett, tin, copper, and sheet-iron worker, # 2008 Penna. avenue N. W., Dr.

To tinning school 24th & F N. W.:

To 6,894 ft. of roof, at 7c. per ft	\$482.58
Peabody	\$123.20
Portoco-s at Eckington.....	18.00
24th & F St., school	482.58
Ballance due on account	153.00
Am't	\$776.78

O K.

BALDWIN & PEAKE.

Mar. 7, '99.

Dec. 23. Check	100
	\$676.78

* * * * *

To tinning Peabody annex:

To 1,232 ft. of ovally, at 10c. p'r ft.....	\$123.20
* * * * *	

To tinning portico-s at Eckington:

To 180 ft., at 10c. p'r ft.....	\$18.00
---------------------------------	---------

Rec'd p'ym't.

177 * * * * *

To tinning Peabody Annex school building:

To 1,232 ft. of ovaly, at 10c. p'r ft..... \$123.20

The above is correct.

BALDWIN & PEAKE.
FRANK BALDWIN.
WM. C. PEAKE.

* * * * *

To tinning Eckington school as per contract..... \$153.00

The above is correct.

BALDWIN & PEAKE.
FRANK BALDWIN.
WM. C. PEAKE.

* * * * *

To tinning school building at 24th & F St. N. W.:

To 6,894 ft. of roof, at 7c. p'r ft..... \$482.58

The above is correct.

BALDWIN & PEAKE.
FRANK BALDWIN.
WM. C. PEAKE.

178

Claim of Hugh Reilly.

Baldwin & Peake, general contractors, 306 B street southeast.

Large contracts a specialty.

WASHINGTON, D. C., Aug. 20, 1898.

Mr. J. L. Petty:

Please pay to the order of Mr. Hugh Reilly three hundred and five dollars, and deduct same from Eckington school-house paym't, and oblige,

BALDWIN & PEAKE.

WASHINGTON, D. C., Jan. 27, 1900.

Messrs. Baldwin & Peake bought of Hugh Reilly, house and fresco painters' supplies, window and plate glass, 1911 Pennsylvania avenue.

American and French mirror plates, lubricating and burning oil.

To merchandise as per account rendered..... \$307.73

179

Memorandum.

The claim of Samuel Ross filed with the report of auditor missing from files.

Claim of William H. West & Bro.

WASHINGTON, D. C., Jan'y 27th, 1900.

Manufacturers of hand-made and machine bricks.

Messrs. Baldwin & Peake to William H. West & Bro., at school-house, 24th & F
Sts. N. W., Dr.

1898.

May 12 to Aug.

19, inclusive.	To 409,628 arch, @ 6.50 per M.....	\$2,662 58	
	" 69,526 select red, @ 9.00 per M ..	625 73	
	" 500 r'd-cor. red, @ 15.00 per M.....	7 50	
	" 50 oct. red " 15.00 " "	75	
	" 6,011 No. 285 b. " 20.00 " "	120 22	
	" 264 " 302 " 60.00 " "	15 84	
	" 170 " 2 red " 15.00 " "	2 55	
			\$3,435.17
June 24.	By 1,600 arch, @ 6.50 per M, removed.....	10 40	
" 28.	" cash on account.....	400 00	
July 5.	" " " "	900 00	
" 30.	" " " "	1,087.12	
			2,397.52
			\$1,037.65

WASHINGTON, D. C., Jan'y 27th, 1900.

Manufacturers of hand-made and machine brick.

Messrs. Baldwin and Peake to William H. West & Bro., at " Peabody school," 6th
bet. B & C N. E., Dr.

1898.

Feb'y 23 to Aug.

25, inclusive.	To 435,082 arch, @ 6.50 per M.....	\$2,828.03	
	" 80,218 select red, " 9.00 " "	721 96	
	" 136 No. 23 " 50.00 " "	6 80	
			\$3,556.79
March 28.	By cash on account	1,080 76	
April 20.	" 500 arch, @ 6.50 per M, removed.	3 25	
May 31.	" cash on account.....	979 81	
July 30.	" " " "	1,196 27	
			3,260.09
			\$296.70

182 *Exceptions of the Alfred Richards Brick Company to Report of Auditor.*

Filed November 16, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.

vs.

THOMAS R. RILEY ET AL.

In Equity. No. 20227.

The Alfred Richards Brick Company, a creditor of the defendants Baldwin and Peake, for exceptions to the report of the auditor filed herein on the 19th day of October, 1900, says:

1. That the auditor erred in allowing preference to the claims of James Stewart and others, aggregating \$3,954.88 (Schedule B), and

the claims of John N. Hart and others, aggregating \$2,061.34 (Schedule C):

a. For that the said claimants and each of them had no lien upon the respective funds from the three life-saving stations and the Hog Island life-saving station or either of them.

b. For that the funds from said four stations were created entirely, or nearly so, by funds received from the school-houses in Washington by Riley, as attorney and trustee, and used by him in completing the said stations; and therefore—

1st. The school-house funds must be followed and restored.

2nd. The school-house funds are entitled to subrogation to the rights of those who received school-house money from Riley for labor and materials contributed toward completing the four
183 life-saving stations, and in any event must have a first lien on the funds from those stations.

3rd. The school-house funds, having been last applied on the life-saving stations and having created the fund from those stations, must be first restored for distribution as a fund from the school-houses.

c. For that the said claimants have no equitable or legal right to preference.

2. That the auditor erred in allowing preference to the claim of William Witthaft (Schedule- B and C):

a. For that said claimant has not shown an equitable assignment.

b. For that there was no fund to be equitably assigned, inasmuch as work on the life-saving stations was at a standstill when Riley was appointed, and there was no money due therefrom from the Government.

c. For that any assignment of Baldwin and Peake's account with or claim against the United States was in violation of the statute and void.

d. For that the funds as to which preference is allowed by the auditor were created entirely, or nearly so, by funds received from the school-houses in Washington by Riley, as attorney and trustee, and used by him in completing the said stations; and therefore—

1st. The school-house funds must be allowed and restored.

2nd. The school-house funds are entitled to subrogation to the rights of those who received school-house money from Riley for labor and materials contributed toward completing the four life-saving stations, and in any event must have a first lien on the
funds from those stations.

184 3rd. The school-house funds, having been last applied on the life-saving stations and having created the fund from those stations, must be first restored for distribution as a fund from the school-houses.

e. For that the said claimant has no equitable or legal right to preference.

3. That the auditor erred in not following the school-house funds and determining the amount expended on and received from each school-house by Riley.

4. That the auditor erred in not determining the net amount received by Riley and the receivers from each school-house and applying the same first to the respective claims for labor and material done and furnished thereon.

5. That the auditor erred in allowing Riley compensation as attorney-in-fact to be paid out of the funds in the hands of the receivers:

a. Because Riley had no fund in his hands upon which he could have a lien at the time the suit was filed.

b. Because Riley was not entitled to any lien for compensation.

c. Because Riley had no equitable or legal right to preference if entitled to compensation as attorney.

d. Because Riley, if entitled to compensation as attorney, had only a claim against Baldwin and Peake as a general creditor.

6. That the auditor erred in allowing Riley compensation as attorney, for that there is no evidence of any agreement for compensation and his services appear to have been voluntary.

185 7. That in any event the amount allowed Riley as compensation as attorney is excessive.

8. That the auditor erred in allowing full compensation to both the temporary and permanent receivers upon the fund turned over by the former to the latter.

9. That the auditor erred in allowing the permanent receivers commission upon the amount received from the Government and paid over to claimants, pursuant to the agreement with the Secretary of the Treasury, and charging the same to the remainder of the fund.

10. That the commissions allowed the permanent receivers are excessive.

11. That the auditor erred in allowing a counsel fee to Douglass and Douglass, complainants' solicitors, to be paid out of the general fund, inasmuch as this suit was not filed for the benefit of the general creditors of Baldwin and Peake, but to take the funds from the general creditors and apply them for the benefit of the complainants, and the effect of the suit thus far has been to divert the funds from a trustee whom the creditors had selected and bring it into court against their wish.

12. That the said fee, if allowed at all, should be charged to any allowance to the complainants or the particular creditors in whose behalf this suit was filed, and who may thereby receive preferences.

W. C. PRENTISS,

Solicitor for the Alfred Richards Brick Company.

186

Exceptions of James Bennett.

Filed November 16, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	In Equity. No. 20227.
<i>vs.</i>		
THOMAS R. RILEY ET AL.		

James Bennett, a creditor of the defendants Baldwin and Peake, for exceptions to the report of the auditor filed herein on the 19th day of October, 1900, says:

1. That he adopts the exceptions to said report filed herein by the Alfred Richards Brick Company and prays the same benefit thereof.

W. C. PRENTISS,
Solicitor for James Bennett.

Exceptions of Hugh Reilly.

Filed November 16, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	In Equity. No. 20227.
<i>vs.</i>		
THOMAS R. REILLY ET AL.		

Hugh Reilly, a creditor of the defendants Baldwin and Peake, for exceptions to the report of the auditor filed herein on the 19th day of October, 1900, says:

187 1. That he adopts the exceptions to said report filed herein by the Alfred Richards Brick Company and prays the same benefit thereof.

2. And for a further exception he says that the auditor erred in not allowing him a preference for the full amount of his claim by virtue of the order in his favor accepted by the auditor for the District of Columbia, to be paid from moneys payable to Baldwin and Peake on account of the school-house upon which the exceptant furnished material to the amount of his claim.

W. C. PRENTISS,
Solicitor for Hugh Reilly.

Exceptions by Samuel Ross.

Filed November 16, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

The defendant Samuel Ross excepts to the report of the auditor of the court filed herein on the 19th day of October, A. D. 1900, and for cause of exception he shows :

1. That the auditor erred in not allowing, as a preferred claim, the balance of \$112.11 due this defendant for material furnished on the order of said Riley, acting as a member of the "Riley, Lincoln, & Ross committee" mentioned in the proceedings, for the completion of certain school-houses in the District of Columbia, begun by defendants Baldwin & Peake, under contracts with said District.

And for further cause this defendant adopts the exceptions to said report filed herein by the Alfred Richards Brick Company as fully as if the same were here again set forth and repeated *in extenso*.

SAM'L MADDUX,
Solicitor for Defendant Ross.

Exceptions of W. H. West & Brother, &c.

Filed November 30, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} In Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

And now come William H. West & Brother, creditors of Baldwin & Peake, and except to the report of the auditor filed herein on the 19th day of October, A. D. 1900, and for cause of exception they adopt the exceptions to said report filed in this cause by the Alfred Richards Brick Company as fully as if the same were here again set forth and repeated *in extenso*.

SAM'L MADDUX,
Sol'r for W. H. West & Bro.

189 DISTRICT OF COLUMBIA, *set* :

Before me, the undersigned, personally appeared Samuel Maddox, who, being first duly sworn according to law, deposes and says :

I am a member of the bar of the supreme court of the District of Columbia. Some time during the early part of the year 1899 I was requested by Messrs. W. H. West & Brother to present before the

auditor of this court, and in accordance with a notice they had received from him, their claim against Baldwin & Peake for brick furnished in and about the erection of certain buildings in the District of Columbia to said last-mentioned firm. The account was presented before the auditor and was not contested by counsel for said Baldwin & Peake.

I also represent in the cause the firm of Barber & Ross, whose claim was contested. Subsequently, and shortly after the incoming of the auditor's report, I filed exceptions thereto in favor of said last-mentioned firm, Barber and Ross, but through inadvertence and by reason of the fact that W. H. West & Brother's claim had not been disputed I omitted to file exceptions in their behalf.

SAM'L MADDUX.

Subscribed and sworn to before me this — day of November, A. D. 1900.

Nov. 30, 1900.

Let these exceptions be filed.

JOB BARNARD, *Justice*.

190

Order Confirming Auditor's Report.

Filed December 4, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

This cause coming on to be heard at this term on motion of complainants' solicitors for an order ratifying and confirming the report of the auditor filed herein on the 19th day of October, 1900, and it appearing to the court that all the exceptions to the allowance of counsel fees to the complainants' solicitors and commissions to the receivers have been withdrawn, and it further appearing to the court that no exceptions have been filed to the allowance of other court costs, and it further appearing that only a part of the defendants, intervenors, and claimants have filed exceptions to said report of the auditor herein, and that the time limited therefor having fully expired, it is by the court this 4th day of December, 1900, adjudged, ordered, and decreed that the said report be, and the same is hereby, ratified and confirmed as against all persons who have not excepted thereto and as against all those who have excepted in so far as their exceptions heretofore filed do not charge errors in said report; and it is further ordered that the receivers herein be, and they are hereby, authorized and directed to forthwith pay to the counsel for complainants the fees allowed them in said report, and the said receivers are hereby authorized to pay themselves out

of the funds now in their hands as such receivers the com-
 191 missions allowed them in said report; and it is further
 ordered that all of said defendants, intervenors, and claim-
 ants, and all other persons whomsoever who have not heretofore
 filed exceptions to said report be, and the same are finally, pre-
 cluded from so doing.

JOB BARNARD,
Asso. Justice.

* *Withdrawal of Exceptions to Allowance of Counsel Fee, &c.*

Filed December 15, 1900.

In the Supreme Court of the District of Columbia..

RICHARD ROTHWELL ET AL.	} Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

Come now the Alfred Richards Brick Company, James Bennett, Hugh Reilly, T. Walker Brick Company, Samuel Ross, trading as Barber and Ross, and William H. West and Brother, creditors of Baldwin and Peake, and exceptants to the report of the auditor in the above-entitled cause, and to each of them withdraw their several exceptions to the allowances for counsel fee to Douglass and Douglass and commissions to the temporary and permanent receivers in said cause.

W. C. PRENTISS,
*Solicitor for the Alfred Richards Brick Co.,
 James Bennett, and Hugh Reilly.*
 W. MOSBY WILLIAMS,
 W. P. PRENTISS,
Solicitors for T. Walker Brick Co.

SAM. MADDOX,
Solicitor for Samuel Ross and William H. West and Brother.

192 *Order Confirming Report of Auditor.*

Filed February 1, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} No. 20227. Equity.
vs.	
THOMAS R. RILEY ET AL.	

Upon consideration of the exceptions to the report of the auditor and after argument of counsel, it is by the court this 1st day of February, 1901, ordered that all such exceptions be, and the same are hereby, overruled, and that said report be, and the same is hereby, in all respects confirmed, and the receivers be, and they are hereby, directed to make distribution as therein provided.

JOB BARNARD, *Justice.*

Entry of Appeal.

Filed February 12, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227.
v.		
THOMAS R. RILEY ET AL.		

Come now the Alfred Richards Brick Company, James Bennett, and Hugh Reilly, by their solicitor, and appeal to the Court of Appeals from the decree entered in the above-entitled cause on February 1st, 1901, overruling the exceptions of these claimants to the report of the auditor and directing distribution.

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W. C. PRENTISS,
Solicitor for Claimants.

Order Fixing Penalty of Bond.

Filed February 15, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Eq. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

The Alfred Richards Brick Company, James Bennett, and Hugh Reilly, claimants in the above-entitled cause, having noted an appeal to the Court of Appeals from the decree passed herein on the 1st day of February, 1901, ratifying the report of the auditor herein and directing distribution thereunder, it is this 15th day of February, A. D. 1901, by the court ordered that the penalty of the appeal bond to be given by said appellants to operate as a supersedeas of said decree be, and the same is hereby, fixed at two thousand dollars.

A. C. BRADLEY, *Justice.*

194

Order for Citation.

Filed February 16, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

The clerk will please issue citation on appeal to the Court of Appeals to the following appellees: The complainants, Richard Rothwell and F. A. Linger; the defendants Thomas R. Riley, Frank Baldwin, William C. Peake, Samuel Ross, William Witthoft, Alex-

ander E. Warner, John N. Hart, George L. Crow, Jonathan Woodhouse, White Hardware Company, John L. Roper Lumber Company, and the following intervenors: United States Fidelity and Guarantee Company, Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, James M. Stewart, Robert Wolf, John H. Cross, Edward B. Hughes, Jr., Southern Oil and Supply Company, H. B. Davis and Company, George L. Crow, William P. Snider, Marion Snider, Dwight M. Weeks, Belt & Dyer, Thomas Brown, Berry Brothers, Clark Brothers, Charles W. Cooksey, Conkling Armstrong Terra Cotta Company, John H. Corning, Central Fire Proofing Company, William E. Dennison, J. McL. Dodson, Dow Wire Works, Joseph J. Darlington, Excelsior Terra Cotta Company, Edgefield & Nashville Manufacturing Company, Joseph Fanning, E. N. Gray & Co., Henry P. Gilbert, William Garthe, Charles W. King & Bro., Lathrop-Hatton Lumber Company, John B. Lord, Littlefield, Alvord & Co., Martin & Bro., B. McQuade, Mitchell & Reed, Northwestern National Insurance
195 Company, Nelms & Company, Potomac Hydraulic Cement Company, Perth Amboy Terra Cotta Company, Philadelphia and Boston Face Brick Company, Albert F. Reavis, Charles E. Smith & Son, Thomas Somerville & Sons, Salem Bedford Stone Company, James G. Wilson, J. T. Walker Sons, William H. West & Bro., A. L. Webb & Company, W. T. Walker & Company, William F. Weller, Washington Slate Company, Woodward Lumber Company, and J. Frank Campbell, interveners.

W. C. PRENTISS,
*Attorney for Appellants, The Alfred Richards Brick Co.,
James Bennett, and Hugh Reilly.*

196 In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER	} No. 20227. In Equity.
vs. THOMAS R. RILEY ET AL.	

The President of the United States to Richard Rothwell and F. A. Linger, complainants; Thomas R. Riley, Frank Baldwin, William C. Peake, Samuel Ross, William Witthaft, Alexander E. Warner, John N. Hart, George L. Crow, Jonathan Woodhouse, White Hardware Company, defendants; John L. Roper Lumber Company, United States Fidelity and Guarantee Company, Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, James M. Stewart, Robert Wolf, John H. Cross, Edward B. Hughes, Jr.; Southern Oil and Supply Company, H. B. Davis and Company, George L. Crow, William P. Snider, Marion Snider, Dwight M. Weeks, Belt and Dyer, Thomas Brown, Berry Brothers, Clark Brothers, Charles W. Cooksey, Conkling Armstrong Terra Cotta Company, John H. Corning, Central Fire Proofing Company, William E. Dennison, J. McL. Dodson, Dow Wire Works, Joseph J. Darlington, Excelsior Terra Cotta Company, Edgefield & Nashville Manufacturing Company, Joseph Fanning, E. N. Gray & Co., Henry P. Gilbert, William Garthe, Charles W. King & Bro., Lathrop-Hatton Lumber Company, John B. Lord, Littlefield, Alvord & Co., Martin & Brother, B. McQuade, Mitchell & Reed, Northwestern National Insurance Company, Nelms & Company, Potomac Hydraulic Cement Company, Perth Amboy Terra Cotta Company, Philadelphia and Boston Face Brick Company, Albert F. Reavis, Charles G. Smith & Son, Thomas Somerville & Sons, Salem-Bedford Stone Company, James G. Wilson, J. T. Walker Sons, William H. West & Bro., A. L. Webb & Company, W. T. Walker & Company, William F. Weller, Washington Slate Company, Woodward Lumber Company, and J. Frank Campbell, interveners, *are* Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 12th day of February, 1901, wherein The Alfred Richards Brick Company, James Bennett, and Hugh Reilly are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.	Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 16th day of February; in the year of our Lord one thousand nine hundred and one.
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JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of —, 190—.

_____,
Attorney for Appellee.

[Endorsed:] 44. No. 20227. Equity. 5758. Rich'd Rothwell vs. Thos. R. Riley *et al.* Citation. Issued Feb'y 16th, 1901. Served copy of the within citation on George H. Lamar, attorney of record for within-named appellee William Witthaft, March 12, 1901; appellees Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, W. P. Snyder and Marion Snider, James M. Stewart, and Robert Wolf not to be found. M'ch 15, 1901. Aulich Palmer, marshal. W. C. Prentiss, attorney for appellant.

[Endorsed:] Jesse W. Rawlings, att'y for B. McQuade, Frank Baldwin; John Goode, att'y for Jonathan Woodhouse, Dwight M. Weeks, Thomas Brown, Chas. W. Cooksey; John Raum att'y for J. Frank Campbell, J. McL. Dodson, Joseph Fanning, Thos. Somerville & Sons.

[Endorsed:] Service hereof accepted. Jas. Francis Smith, sol'r for Wm. Garthe. Feb. 21, 1901. Barnard & Johnson, sol'rs for Chas. G. Smith & Son. Feb'y 28, 1901. Douglass & Douglass, complainants' solicitors. March 1st, 1901. Joseph Dwight, sol. for W. C. Peake, King & Bro., & Belt & Dyer; Bates Warren, for Mitchell & Reed; E. H. Thomas, for Gilbert; Geo. Francis Williams, solicitor for James M. Stewart and Webb & Co.; C. A. Brandenburg, for U. S. F. & G. Co. and others of record; Birney & Woodward, for Edgefield & Nashv. Mfg. Co. & Jos. Fanning; Hamilton & Colbert, att'ys for J. H. Corning *et al.*; Richard A. Ford, att'y for Salem-Bedford Stone Co.

[Endorsed:] John B. Lord, S. T. Thomas, for Riley *et al.* Service hereof accepted as sol. for A. E. Warner and Hughes. George H. Lamar; Sam'l Maddox, for Sam'l Ross & Wm. H. West & Bro.; Edwin Forrest, for Wm. E. Dennison; Wolf & Rosenberg, for Clark Bros.; W. S. Johnston, for Nelms & Co.; Wharton E. Lester, for Walker Sons; Charles Earl, for Pot. Hyd. C. Co.; W. Mosby Williams, for W. T. Walker & Co., to use of W. T. Walker Brick Co.; D. W. Baker, solicitor for H. B. Davis & Co., Southern Oil & Supply Co.; J. J. Darlington, *in propria persona*.

[Endorsed:] R. B. Behrend, att'y for Wm. F. Weller; Rutledge Willson, sol. for White Hardware Co.; J. W. Warner, for Excelsior Terra Cotta Co. & Lathrop-Hatton Lumber Co.; E. Richard Shipp, for A. S. Reavis; Edward A. Newman, sol'r for Woodward Lumber Co. M'ch 1, '01. Service acknowledged this 1st day M'ch, 1901. Andrew Y. Bradley, sol. Roper Lumber Co.; O. H. Budlong, sol. for Geo. L. Crow; Frank Lyon, att'y for Berry Bros.; John E. Taylor, att'y for N. W. Nat. Ins. Co. & L. A. & Co.; Phillip Walker, att'y for Dow Wire Works.

197

Appeal of William Garthe.

Filed February 21, 1901.

In the Supreme Court of the District of Columbia.

ROTHWELL ET AL. }
vs. Equity. No. 20227.
RILEY ET AL. }

Now comes William Garthe, by his attorney, and appeals from the decree rendered herein on February 1st, 1901, confirming the auditor's report filed herein and directing distribution thereunder.

JAMES FRANCIS SMITH,
Sol'r for Wm. Garthe.

Order Affixing Penalty of Appeal Bond of Garthe.

Filed February 21, 1901.

In the Supreme Court of the District of Columbia, Sitting in Equity.

RICHARD ROTHWELL ET AL. }
vs. Equity. 20227.
THOMAS R. RILEY ET AL. }

An appeal having been noted in the above-entitled cause by William Garthe, claimant, from the decree rendered herein on the 1st day of February, 1901, confirming the report of the auditor and directing distribution thereunder, it is by the court, this 21st day of February, 1901, ordered that the penalty of the appeal bond to be given herein for the costs of said appeal be, and the same is, fixed at one hundred dollars.

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A. C. BRADLEY, *Justice.*

Order for Appeal & Citation.

Filed February 23, 1901.

In the Supreme Court of the District of Columbia, the 23rd Day of February, 1901.

RICHARD ROTHWELL ET AL. }
vs. Equity. No. 20227, Docket No. 46.
THOMAS R. RILEY ET AL. }

The clerk of said court will enter separate appeals to the Court of Appeals from the decree passed herein February 1, 1901, overruling exceptions to auditor's report confirming the same and directing distribution thereunder on behalf of Samuel Ross, trading as Barber & Ross, and W. H. West & Brother, and issue citations to all par-

ties, appellants and appellees, as mentioned in citation issued February 16, 1901, in this cause.

SAM'L MADDUX,
(G.),
Solicitor for Sam'l Ross & W. H. West & Bro.

199 In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER	}	At Law. No. 20227. In Equity.
vs. THOMAS R. RILEY ET AL.		

The President of the United States to Richard Rothwell and F. A. Linger, complainants; Thomas R. Riley, Frank Baldwin, William C. Peake, William Witthoft, Alexander E. Warner, John N. Hart, George L. Crow, Jonathan Woodhouse, White Hardware Company, defendants; John L. Roper Lumber Company, United States Fidelity and Guarantee Company, Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, James M. Stewart, Robert Wolf, John H. Cross, Edward B. Hughes, Jr., Southern Oil and Supply Company, H. B. Davis and Company, William P. Snider, Marion Snider, Dwight M. Weeks, Belt and Dyer, Thomas Brown, Berry Brothers, Clark Brothers, Charles W. Cooksey, Conkling-Armstrong Terra Cotta Company, John H. Corning, Central Fire Proofing Company, William E. Dennison, J. McL. Dodson, Dow Wire Works, Joseph J. Darlington, Excelsior Terra Cotta Company, Edgefield & Nashville Manufacturing Company, Joseph Fanning, E. N. Gray & Co., Henry P. Gilbert, William Garthe, Charles W. King & Bro., Lathrop-Hatton Lumber Company, John B. Lord, Littlefield, Alvord & Co., Martin & Brother, B. McQuade, Mitchell & Reed, Northwestern National Insurance Company, Nelms & Company, Potomac Hydraulic Cement Company, Perth Amboy Terra Cotta Company, Philadelphia and Boston Face Brick Company, Albert F. Reavis, Charles G. Smith & Son, Thomas Somerville & Sons, Salem-Bedford Stone Company, James G. Wilson, J. T. Walker Sons, William H. West & Bro., A. L. Webb & Company, W. T. Walker & Company, William F. Weller, Washington Slate Company, Woodward Lumber Company, J. Frank Campbell, The Alfred Richards Brick Company, James Bennett, and Hugh Reilly, intervenors, *are* Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 23d day of February, 1901, wherein Samuel Ross, trading as Barber & Ross, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 25 day of February, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this — day of —, 190—.

Attorney for Appellee.

JOHN RAUM,

Att'y for J. Frank Campbell, J. McL. Dodson.

JOSEPH FANNING.

THOS. SOMERVILLE & SONS.

DWIGHT M. WEEKS.

THOMAS BROWN.

CHAS. W. COOKSEY.

[Endorsed:] (49.) No. 20227. Equity. 5758. Rich'd Rothwell *et al. vs. Thos. R. Riley et al.* Citation. Issued. Febr'y 25th, 1901. Served copy of the within citation on George H. Lamar, att'y of record for within-named appellee, William Witthoft, M'ch 12, 1901; appellees Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, James M. Stewart, and Robert Wolf not to be found, M'ch 21, 1901. Aulick Palmer, marshal. Sam'l Maddox, attorney for appellant. Service ack. for Marion & Wm. P. Snider. Leckie & Fulton.

[Endorsed:] Service accepted March 1st, 1901. Douglass & Douglass, complainants' solicitors. Service accepted March 1, 1901. Levi H. David, solicitor for John H. Cross and Robert Wolf; Joseph D. Wright, sol. for W. C. Peake, for King & Bro., and for Belt & Dyer; Bates Warren, for Mitchell & Reed; E. H. Thomas, for Gilbert; Birney & Woodard, for Edgefield & Nashv. Mfg. Co. & Jos. Fanning; C. A. Brandenburg, sol'r as per record; Hamilton & Colbert, att'ys for J. H. Corning, Conkling-Armstrong T. C. Co., Central Fire Proofing Co., Perth Amboy T. C. Co., Phila. & Boston Face Brick Co.; Richard A. Ford, att'y for Salem-Bedford Stone Co.; S. T. Thomas, for Riley *et al.*; George H. Lamar, as sol. for A. E. Warner and Hughes. Service accepted M'ch 1, '01. E. Forrest, for Wm. E. Dennison.

[Endorsed:] Service accepted. Geo. Francis Williams, solicitor for James M. Stewart and A. L. Webb & Co.; Wolf & Rosenberg, for Clark Bros.; W. A. Johnston, for Nelms & Co.; Wharton E. Lester, for Walker Sons; Charles Earl, for Pot. Hyd. C. Co.; W. Mosby Williams, for W. T. Walker & Co., to use of W. T. Walker Brick Co.; D. W. Baker, solicitor for H. B. Davis & Co., Southern Oil and Supply Co.; J. J. Darlington, *in propria persona*; R. B. Behrend, att'y for Wm. F. Weller; Rutledge Willson, sol. for White Hardware Co.; J. W. Warner, for Excelsior Terra Cotta Co. & Lathrop-Hatton Lumber Co.; W. C. Prentiss, sol'r for Richards Brick Co., Bennett & Reilly.

[Endorsed:] John B. Lord, Frank Baldwin, E. Richard Shipp, for A. S. Reavis; James Francis Smith, sol'r for Wm. Peake; Edward A. Newman, sol'r for Woodward Lumber Co. M'ch 1, '01. Service acknowledged this 1st day M'ch, 1901. A. Y. Bradley, sol. Roper Lumber Co.; O. H. Budlong, sol'r for Geo. L. Crow; Frank Lyon, att'y for Berry Bros.; John E. Taylor, att'y for N. W. Nat. Ins. Co. & L., A. & Co.; Philip Walker, att'y for Dow Wire Works; Jesse W. Rawlings, att'y for B. McQuade; John Goode, att'y for Jonathan Woodhouse.

200 In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER	} No. 20227. In Equity.
vs.	
THOMAS R. RILEY ET AL.	

The President of the United States to Richard Rothwell and F. A. Linger, complainants; Thomas R. Riley, Frank Baldwin, William C. Peake, Samuel Ross, William Witthaft, Alexander E. Warner, John N. Hart, George L. Crow, Jonathan Woodhouse, White Hardware Company, defendants; John L. Roper Lumber Company, United States Fidelity and Guarantee Company, Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, James M. Stewart, Robert Wolf, John H. Cross, Edward B. Hughes, Jr., Southern Oil and Supply Company, H. B. Davis and Company, William P. Snider, Marion Snider, Dwight M. Weeks, Belt and Dyer, Thomas Brown, Berry Brothers, Clark Brothers, Charles W. Cooksey, Conkling-Armstrong Terra Cotta Company, John H. Corning, Central Fire Proofing Company, William E. Dennison, J. McL. Dodson, Dow Wire Works, Joseph J. Darlington, Excelsior Terra Cotta Company, Edgefield & Nashville Manufacturing Company, Joseph Fanning, E. N. Gray & Co., Henry P. Gilbert, William Garthe, Charles W. King & Bro., Lathrop-Hatton Lumber Company, John B. Lord, Littlefield, Alvord & Co., Martin & Brother, B. McQuade, Mitchell & Reed, Northwestern National Insurance Company, Nelms & Company, Potomac Hydraulic Cement Company, Perth Amboy Terra Cotta Company, Philadelphia and Boston Face Brick Company, Albert F. Reavis, Charles G. Smith & Son, Thomas Somerville & Sons, Salem-Bedford Stone Company, James G. Wilson, J. T. Walker Sons, A. L. Webb & Company, W. T. Walker & Company, William F. Weller, Washington Slate Company, Woodward Lumber Company, J. Frank Campbell, The Alfred Richards Brick Company, James Bennett, and Hugh Reilly, intervenors, *are* Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 23d day of February, 1901, wherein William H. West, J. Thomas West, and Henry P. West, trading as Wm. H. West and

Bro., are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 25th day of February, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this — day of —, 190—.

_____,
Attorney for Appellee.

JOHN RAUM,

Att'y for J. Frank Campbell.

THOS. SOMERVILLE & SONS.

J. McL. DODSON.

JOSEPH FANNING.

[Endorsed:] No. 20227. Equity. 5758. Rich'd Rothwell *et al.* vs. Thos. R. Riley *et al.* Citation. Issued Feb'ry 25th, 1901. Served copy of the within citation on George H. Lamar, attorney of record for appellee William Witthaft, March 12, 1901; appellees Edward Dodge, Henry Dodge, Jenkins Paint and Oil Company, Lyman Robinson, James M. Stewart, and Robert Wolf not to be found. March 21st, 1901. Aulich Palmer, marshal. Sam'l Maddox, attorney for appellant. Service ack. for Marion & Wm. P. Snider. Leckie & Fulton.

[Endorsed:] Service acknowledged March 1st, 1901. Douglas & Douglas, complainants' solicitors. Joseph D. Wright, sol. for W. C. Peake, King & Bro., & Belt & Dyer; Bates Warren, for Mitchell & Reed; E. H. Thomas, for H. P. Gilbert; Birney & Woodard, for Edgefield & Nashv. Mfg. Co. & Jos. Fanning; C. A. Brandenburg, sol'r as per record; Hamilton & Colbert, att'ys for J. H. Corning & others; Richard A. Ford, att'y for Salem-Bedford Stone Co.; S. T. Thomas, sol'r for Riley *et al.*; George H. Lamar, as sol. for A. E. Warner and Hughes; Geo. Francis Williams, solicitor for James M. Stewart & Webb & Co. Service acknowledged M'ch 1, -901. E. Forrest, for Wm. E. Dennison.

[Endorsed:] M'ch 1, 1901. Wolf & Rosenberg, for Clark Bros.; W. S. Johnston, for Nelms & Co.; Wharton E. Lester, for J. T. Walker Sons; Charles Earl, Pot. Hyd. C. Co.; W. Mosby Williams, for W. T. Walker & Co., to use of W. T. Walker Brick Co.; J. J. Darlington, *in propria persona*; B. B. Behrend, att'y for Wm. F. Weller; Rutledge Willson, sol'r for White Hardware Co.; J. W. Warner, for Excelsior Terra Cotta Co. and Lathrop-Hatton Lumber Co.; James Francis Smith, sol'r for Wm. Garthe; John B. Lord, Frank Baldwin; W. C. Prentiss, for Richards Brick Co., Bennett & Reilly, Dwight M. Weeks, Chas. W. Cooksey.

[Endorsed:] E. Richard Shipp, for A. S. Reavis; Edward A. Newman, sol'r for Woodward Lumber Co. M'ch 1, '01. Service acknowledged this 1st day M'ch, 1901. A. Y. Bradley, sol. Roper Lumber Co.; O. H. Budlong, sol'r for Geo. L. Crow; Frank Lyon, att'y for Berry Bros.; John E. Taylor, att'y for N. W. Nat. Ins. Co. & L., A. & Co.; Philip Walker, att'y for Dow Wire Works; Jesse W. Rawlings, att'y for B. McQuade; John Goode, att'y for Jonathan Woodhouse, Thomas Brown.

201 *Order Fixing Penalty of Appeal Bond of Samuel Ross & W. H. West & Bro.*

Filed February 25, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

Samuel Ross and W. H. West & Brother having appealed to the Court of Appeals from the decree passed herein February 1, 1901, it is ordered this 25th day of February, 1901, that the penalty of the appeal bond for costs on each of said appeals be, and the same is hereby, fixed at one hundred dollars.

A. C. BRADLEY,
Asso. Justice.

202 *Order for Citation to Appellees.*

Filed February 26, 1901.

In the Supreme Court of the District of Columbia, Sitting in Equity.

ROTHWELL ET AL.	} Equity. No. 20227.
vs.	
RILEY ET AL.	

The clerk will please issue citations to Richard Rothwell and F. A. Linger, complainants; Thomas R. Riley, Frank Baldwin, William C. Peake, Samuel Ross, William Wiffhaft, Alexander E. Warner, John N. Hart, George L. Crow, Jonathan Woodhouse, White Hardware Company, defendants; John L. Roper Lumber Company, United States Fidelity & Guaranty Company, Edward Dodge, Henry Dodge, Jenkins Paint & Oil Company, Lyman Robinson, James M. Stewart, Robert Wolf, John H. Cross, Edward B. Hughes, Jr.; Southern Oil & Supply Company, H. B. Davis & Company, William P. Snider, Marion Snider, Dwight M. Weeks, Belt & Dyer, Thomas Brown, Berry Brothers, Clarke Brothers, Charles W. Cooksey, Conkling Armstrong Terra Cotta Company, John H. Corning, Central Fire Proofing Company, William E. Dennison, J. McL. Dodson, Dow Wire Works, Joseph J. Darlington, Excelsior Terra Cotta Com-

pany, Edgefield & Nashville Manufacturing Company, Joseph Fanning, E. N. Gray & Company, Henry P. Gilbert, Charles W. King & Bro., Lathrop-Hatton Lumber Company, John B. Lord, Littlefield, Alvord Company, Martin & Brother, B. McQuade, Mitchell & Reed, Northwestern & National Insurance Company, Nelms & Co., Potomac Hydraulic Cement Co., Perth Amboy Terra Cotta Co., Philadelphia & Boston Face Brick Co., Albert F. Reavis, Charles G. Smith & Son, Thomas Somerville & Sons, Salem-Bedford Stone Co., James G. Wilson, J. T. Walker Sons, William H. West & Bro., A. L. Webb & Co., W. T. Walker & Co., William F. Weller, Washington Slate Co., Woodward Lumber Company, J. Frank Campbell, and The Alfred Richards Brick Company, interveners, etc.

JAMES FRANCIS SMITH,
Solicitor for Wm. Garthe, Claimant and Appellant.

204 In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER }
vs. } No. 20227. In Equity.
THOMAS R. RILEY ET AL.

The President of the United States to Richard Rothwell and F. A. Linger, complainants; Thomas R. Riley, Frank Baldwin, William C. Peake, Samuel Ross, William Witthoft, Alexander E. Warner, John N. Hart, George L. Crow, Jonathan Woodhouse, White Hardware Company, defendants; John L. Roper Lumber Company, United States Fidelity & Guaranty Company, Edward Dodge, Henry Dodge, Jenkins Paint & Oil Company, Lyman Robinson, James M. Stewart, Robert Wolf, John H. Cross, Edward B. Hughes, Jr., Southern Oil & Supply Company, H. B. Davis & Company, William P. Snider, Marion Snider, Dwight M. Weeks, Belt & Dyer, Thomas Brown, Berry Brothers, Clarke Brothers, Charles W. Cooksey, Conkling Armstrong Terra Cotta Company, John H. Corning, Central Fire Proofing Company, William E. Dennison, J. McL. Dodson, Dow Wire Works, Joseph J. Darlington, Excelsior Terra Cotta Company, Edgefield & Nashville Manufacturing Company, Joseph Fanning, E. N. Gray & Company, Henry P. Gilbert, Charles W. King & Bro., Lathrop-Hatton Lumber Company, John B. Lord, Littlefield, Alvord Company, Martin & Brother, B. McQuade, Mitchell & Read, Northwestern & National Insurance Company, Nelms & Co., Potomac Hydraulic Cement Co., Perth Amboy Terra Cotta Co., Philadelphia & Boston Face Brick Co., Albert F. Reavis, Charles G. Smith & Son, Thomas Somerville & Sons, Salem-Bedford Stone Co., James G. Wilson, J. T. Walker Sons, William H. West & Bro., A. L. Webb & Co., W. T. Walker & Co., William F. Weller, Washington Slate Co., Woodward Lumber Company, J. Frank Campbell, and The Alfred Richards Brick Company, interveners, etc., Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing
15—1081A

the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 21st day of February, 1901, wherein William Garthe, claimant, is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 26th day of February, in the year of our Lord one thousand nine hundred and one.

JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this 16th day of March, 1901.

WHARTON E. LESTER,
Attorney for Appellee.

Service ack. for Marion & Wm. P. Sneider.

LECKIE & FULTON.

[Endorsed:] No. 20227. Equity. Rich'd Rothwell *et al. vs.* Thos. R. Riley *et al.* Citation. Issued Febr'y 26th, 1901. Served copy of the within citation on ————. ————, marshal. Return of jud. James F. Smith, attorney for appellant Wm. Garthe.

[Endorsed:] Service accepted. W. C. Prentiss, for Richards Br. Co., Jas. Bennett, & Hugh Reilly. March 9, 1901. Douglass & Douglass, complainants' solicitors. C. A. Brandenburg, sol'r as per record. Service acknowledged March 9, 1901. Edward A. Newman, sol'r for Woodward Lumber Co.; Geo. Francis Williams, solicitor for Stewart & A. L. Webb & Co.; Sam'l Maddox, solicitor for Barber & Ross and W. H. West & Bro.; S. T. Thomas, sol'r for Riley *et al.*; Bates Warren, sol. for Mitchell & Reed. J. J. Darlington.

[Endorsed:] Service accepted. Rutledge Willson, for White Hardware Co.; George H. Lamar, as sol. for A. E. Warner & Hughes; Joseph D. Wright, sol. for W. C. Peake, as per record. Service accepted this 14th day of M'ch, 1901. Andrew Y. Bradley, sol. for Jno. L. Roper Lumber Co.; J. W. Warner, attorney for Excelsior Terra Cotta Co. & Lathrop-Hatton Lumber Co. Service accepted 3, 14, 1901. John E. Taylor, att'y for Littlefield, Alvord & Co. and Northwestern Nat'l Ins. Co.; Charles Earl, for Pot. Hyd. C. Co.; E. H. Thomas, for Gilbert; Birney & Woodard, for Edgefield & Nashville Mfg. Co.; Wolf & Rosenberg, for Clark Bros. Lime & Cement Co.; M. J. Colbert; D. W. Baker, sol. as per record.

[Endorsed:] O. H. Budlong, att'y for Geo. L. Crow; E. Richard Shipp, 3, 15, '01, att'y for A. S. Reavis, intervenor; R. B. Behrend, att'y for Wm. F. Weller; Edwin Forrest, att'y for Wm. E. Dennison; W. A. Johnston, att'y for Nelms & Co.; Barnard & Johnson, att'ys for Chas. G. Smith & Son; W. Mosby Williams, sol. for W. T. Walker

& Co., to use of W. T. Walker Brick Co.; Levi H. David, solicitor for Cross & Wolf; John Goode, att'y for Jonathan Woodhouse; Frank Lyon, att'y for Berry Bros.; Richard A. Ford, sol'r for Salem-Bedford Stone Co.; Jesse W. Rawlings, att'y for B. McQuade; Philip Walker, attorney for Dow Wire Works.

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Memoranda.

February 26, 1901.—Appeal bond of William Garthe filed.

February 26, 1901.—Appeal bond of The Alfred Richards Brick Company filed.

March 7, 1901.—Appeal bond of W. H. West & Bro. filed.

March 7, 1901.—Appeal bond of Samuel Ross filed.

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Designation of Parts of Record by William Garthe.

Filed March 8, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	} Equity. No. 20227.
vs.	
THOMAS R. RILEY ET AL.	

Comes now William Garthe, appellant and appellee, and designates the following parts of the record to constitute the record on appeal to the Court of Appeals in addition to the parts heretofore designated by the other appellants and appellees:

1. Testimony of W. C. Peake, auditor's testimony, page 56, lines 3 to 21, inclusive.
2. Testimony-in-chief of James T. Petty, auditor's testimony, pages 177 and 178 to cross-examination.
3. Testimony of Thomas R. Riley, from line 32, page 75, to line 3, page 76.
4. Exceptions of William Garthe to auditor's report.
5. Claim of William Garthe.
6. Appeal of William Garthe.

JAMES FRANCIS SMITH,
Solicitor for William Garthe.

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EXTRACTS FROM TESTIMONY FILED BEFORE AUDITOR.

Filed October 19, 1900.

Testimony of W. C. Peake.

Q. Look at these short copies of judgments I show you and tell me what is the sum total of the first one. A. R. C. Hardbarger, 61.09.

Q. What is the amount of the judgments? A. The items are 61.09 and 24.45 & .40 costs.

Q. On whose contract was that suit brought? A. R. C. Hardbarger. He was a carpenter and worked on the Allegheny post-office building.

Q. Was the Allegheny post-office contract a contract of Baldwin & Peake or of Baldwin individually? A. Baldwin & Peake.

Q. Did Mr. Rothwell pay that judgment? A. Yes, sir.

Q. What about the second one, Ernest Frank against Rothwell? A. That is a case where the Baltimore Brick Company furnished some brick to the Eckington school-house.

Q. That was a Baldwin & Peake debt, too? A. Yes, sir; the debt was transferred to E. T. Frank.

Q. And the last one was paid by Rothwell, too? A. Yes, sir.

* * * * *

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FRIDAY, *June 8th*, 1900—11.30 a. m.

Hearing pursuant to adjournment.

Present: Messrs. Douglass, Brandenburg, Wright, Prentiss, and Smith.

JAMES T. PETTY, having first been duly sworn, testifies as follows:

By Mr. SMITH:

Q. You are the auditor of the District of Columbia? A. Yes, sir.

Q. And as such officer you pass on all claims against the District of Columbia? A. Yes, sir.

Q. I would like to call your attention to a contract for building the Eckington and Peabody school-houses. State whether there were any claims filed with you by materialmen under the provisions of that contract. A. Yes, sir.

Q. What is the provision of the contract under which those claims were filed? A. In this contract No. 2534, this clause occurs in the general conditions: "Pay of workmen.—Contractors will pay,"

Q. State whether or not, under that provision, any claims were filed by William Garthe or in his behalf; and, if so, what they were. A. Two bills were filed by him; one June 3d, covering—

Q. June 3d, what year? A. 1898. The Eckington school building, 425.00, and July 20th, 1898, on the Peabody school building, a claim of \$605.00.

Q. State whether or not, in response to those claims, you retained those amounts out of the sums payable to Baldwin & Peake. A. I did.

Q. You retained those specific sums? A. Yes, sir.

Q. What disposition did you make of them? A. I retained them with the intention of paying them to Mr. Garthe, but objection was made and I did not pay it over to Mr. Garthe, but paid the money to the receivers.

Q. You held it specifically for the purpose of satisfying the claims of William Garthe? A. I retained it for that specific purpose.

Q. State whether any other claims were filed with you under that provision of the contract.

Mr. Douglass objects.
Objection is sustained.

* * * * *

Testimony of Thomas R. Riley.

Q. When was that power of attorney given to you? A. August, 1898.

Q. Did Baldwin & Peake collect or take charge of any portion of the money after you took charge? A. No, sir.

210 *Exception of William Garthe to Report of Auditor.*

Filed November 17, 1900.

In the Supreme Court of the District of Columbia, Sitting in Equity.

ROTHWELL ET AL.	}	Equity. No. 20227.
vs:		
RILEY ET AL.		

Now comes William Garthe, by his counsel, and excepts — the report of the auditor of the court filed herein on the 19th day of October, 1900, and for cause of exception shows:

1. That the auditor erred in not allowing as a preferred claim the balance of \$1,030.00 due the said Garthe for materials furnished under contract with Baldwin and Peake for the Eckington and Peabody school-houses, in the District of Columbia, which balance was retained by the auditor of the District for the protection of the said Garthe, after due notice by him, under the provisions of the clause in the contract entered into by and between the District Commissioners and Baldwin and Peake, whereby the Commissioners were authorized to retain such balance, which balance was turned over by the auditor of the District to the receivers appointed by the court herein and constitutes a specific fund, upon which the said Garthe is entitled to a lien.

2. And for further cause the defendant adopts the excep-
211 tions to said report filed herein by the Alfred Richards Brick Company as fully as if the same were again set forth and repeated *in extenso*.

JAMES FRANCIS SMITH,
Attorney for William Garthe.

Claim of William Garthe.

James Francis Smith, counselor-at-law, Fendall building,
WASHINGTON, D. C., March 24th, 1900.
Baldwin & Peake to William Garthe, Dr.

To balance due on contract for slating the U. S. Govern-
ment Hospital building, the Eckington school, and
the Peabody school..... \$1,030.00

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Claim of William Garthe.

BALTIMORE, August 10th, 1898.
Messrs. Baldwin & Peake to William Garthe, slate, tile, and tin
roofer, 32 W. Montgomery street.
To slating roof on Peabody Annex school, furnishing all
material and labor, as per estimate submitted..... \$605.00
No payments on account where reserved on this job ; consequently
the whole bill is due.

BALTIMORE, August 10th, 1898.
Messrs. Baldwin & Peake, Washington, D. C., to William Garthe,
slate, tile, and tin roofer, 32 W. Montgomery street.
To amount of contract for slating roof on Ecking-
ton school, as per estimate submitted..... \$850.00
Total..... \$850.00
July 2, 1898. Rec. on account of above contract.. 75.00
July 20, 1898. " " " .. 50.00
Aug. 6, 1898. " " " .. 300.00
Total..... \$425.00
Bal. due 425.00
Bal. due \$425.00

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Appellees' Designation of Record on Appeal, &c.

Filed March 7, 1901.
In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL. }
vs. } In Equity. No. 20227.
THOMAS R. RILEY ET AL. }

Now come the appellees herein and designate the following parts
of the record to constitute the record on appeal to the Court of Ap-
peals in addition to the parts designated by the appellants :
1. Order of injunction and appointment of receivers, March 7,
1899.

2. Order granting leave to file amended cross-bill.
 3. Exhibit (1) to the original cross-bill, filed March 16, 1899.
 4. Order of the court affirming payments made by receivers and referring certain claims to the auditor, December 22, 1899.
 5. Order directing receivers to pay certain claims in a previous order of August, 1899.
 6. Report of the auditor, filed October 19, 1900.
 7. Exceptions of William Witthaft to the auditor's report as filed November 19, 1900.
 8. Exceptions of Thomas R. Riley to auditor's report.
 9. Motion of Riley, Ross, and Lincoln, filed April 22, 1899.
 10. Testimony taken in support of amended cross-bill, omitting exhibits.
- 214 11. The following extracts of testimony taken before the auditor: Lines 4 to 9, inclusive, page 9.
- Testimony of William C. Peake: First seven lines, including heading, page 46; lines 13 to 17, inclusive, page 51.
- Testimony of Henry H. McKee: Page 63 to and including line 32, page 64.
- Testimony of Thomas R. Riley, commencing with line 24, page 76, and ending with line 3, page 77; lines 18 to 25, page 333; line 22, page 350, to and including line 20, page 351.
- Testimony of Samuel Ross, commencing with line 4, page 119, to and including line 19, page 120; commencing with line 4, page 238, through page 240.
- Testimony of J. T. Petty, commencing with line 25, page 360; through page 363.
12. The following extract from the deposition of Henry Dodge, taken before the commissioner at Norfolk: Commencing with line 11, page 116, to and including line 9, page 117.
13. The opinion of Mr. Justice Barnard as rendered in overruling exceptions.

DOUGLASS & DOUGLASS,
Sol'rs for Complainants.
 JOSEPH D. WRIGHT,
Sol'r for W. C. Peake.
 GEO. H. LAMAR,
Sol'r for A. E. Warner & Hughes.

C. A. BRANDENBURG,
Sol'r as per Record.

Order of Injunction, &c.

Filed March 7, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL and F. A. LINGER,	}	Equity. No. 20227, Doc. 46.
Complainants,		
vs.		
THOMAS R. RILEY ET AL.,	}	
Defendants.	}	

Upon consideration of the bill of complaint in this cause, it is by the court this 7th day of March, A. D. 1899, ordered, adjudged, and decreed:

1. That the defendants Frank Baldwin and William C. Peake and each of them be, and the same are hereby, enjoined and restrained from endorsing any check or checks, draft or drafts, received or to be received by them or either of them in the payment of the claim against the United States described in said bill, or any part thereof, unto the defendants Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, or to either of them, or to any one else other than the receivers hereinafter appointed, and from in any way co-operating with the said defendants, Riley, Lincoln, and Ross, or either of them, procuring this or any other fund which might be considered as an asset of the said firm of Baldwin and Peake.

That defendants Thomas R. Riley, S. Dana Lincoln, and Samuel Ross be, and they are hereby, restrained individually and collectively from collecting the said sum of eight thousand and
216 eighty-eight dollars (\$8,088.00) or any part thereof or any asset or assets belonging to the said firm of Baldwin and Peake, from doing any act or thing which would in any way prevent or tend to prevent the payment of the whole or any part of the said claim or any other asset or assets of the said firm to the receiver herein appointed; and, further, said defendants, Riley, Lincoln, and Ross, be, and they are hereby, enjoined and restrained, individually and collectively, from paying out or disbursing other than to the said receivers any fund or funds which may now be in their hands or in the hands of either of them belonging to or received as the property or funds of or which might be considered as an asset of the said firm of Baldwin and Peake, and from disbursing the whole or any part of the said fund of eight thousand and eighty-eight dollars (\$8,088.00) which may have been received by them prior to the service hereof.

2. That Joseph J. Darlington and George W. Lamar be, and they are hereby, appointed temporary receivers for the firm of Baldwin and Peake, defendants in this case, and that upon giving bond in the penal sum of fifteen thousand dollars, to be approved by this court, be authorized, and they are hereby directed, to take charge of the business of said firm of Baldwin and Peake, with full power to collect the fund of eight thousand and eighty-eight dollars (\$8,088.00)

or any part thereof from the United States and to receive the same or any check therefor, and to do and perform such other acts and things as may be requisite and necessary to be done in and about the premises, and also to collect any and all moneys which may be due and payable to said firm from any source whatsoever and to hold and disburse the same as this court may hereafter direct, 217 and to that end it is hereby directed that defendants Baldwin and Peake be, and they are hereby, required to endorse to said receivers any check or checks that may be received by them or either of them or by said receivers requiring their said endorsement for them to receive any of the funds of said firm of Baldwin and Peake thereon, and the said defendants, Thomas R. Riley, S. Dana Lincoln, and Samuel Ross, be, and they are hereby, directed and required to turn over unto said receivers such portion or the whole of said fund of eight thousand and eighty-eight dollars (\$8,088.00) as may have been collected by them or either of them before the service hereof, and also any fund or funds which may now be in their hands or in the hands of either of them belonging to receivers as the property or fund of or which might be considered as an asset of the said firm of Baldwin and Peake.

This order is not to be construed as preventing defendant Thomas R. Riley from delivering to and the defendant W. C. Peake from endorsing to Chas. A. Douglass check for three thousand five hundred dollars, intended by the Secretary of the Treasury to be used to settle certain undisputed claims for labor, said check being over and above the aforesaid sum of \$8,088.

W. S. COX, J.

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Marshal's Return.

Served copy of the within order on within-named defendants—Thomas R. Riley, Frank Baldwin, William C. Peake, S. Dana Lincoln, and Samuel Ross—March 7, 1899.

AULICK PALMER, *Marshal.*

EXHIBIT No. 1.

Filed March 16, 1899.

This indenture, entered into this — day of August, A. D. 1898, by and between Frank Baldwin, of the first part, and William C. Peake, of the second part, both of the District of Columbia,

Witnesseth: Whereas the said parties of the first and second parts, by articles of agreement dated the third day of June, A. D. 1898, became associated together as copartners "for the purpose of carrying on in the District of Columbia and elsewhere, the art, trade, and business of contractors and builders;" and whereas, as such contractors and builders they have entered into certain contracts with the United States Government to build four (4) life-saving stations (in the States of Virginia

and North Carolina), not yet fully completed, and have also
219 entered into contracts with the District of Columbia for work
in and about the three school-houses in said District, to wit:
the Eckington, the Toner and the Peabody annex, which said con-
tracts have been in part completed, and whereas certain differences
have arisen between the said Baldwin and the said Peake in regard
to the management of the business of the firm, now in order to
obviate the possible litigation between the said partners over said
differences, and to facilitate the completion and execution of the
contracts above referred to, the said parties hereto of the first and
second parts have, and do hereby appoint Thomas R. Riley their
true and lawful attorney to complete and carry out the several con-
tracts above named, and for that purpose empower the said Riley to
do all things that may be necessary and requisite, in the name and
behalf of the said firm, to fully execute said contract. And further
to collect any and all sums of money that may be now payable, or
may become hereafter payable, from the United States Government
or from the District of Columbia, by reason of, or on account of, the
said contracts. And from the said monies so received to pay any
and all just indebtednesses due and incurred in and about the exe-
cution of said contracts. It being distinctly understood that any
money received on account of any of the said contracts above
referred to shall be applied in the first instance to payment of the
indebtedness of the said firm incurred in the performance thereof,
and that any surplus, after satisfying all of said indebtedness under
the said contract shall be applied thereafter to liquidation of any
indebtedness of the said firm, or any expense to be incurred,
under any other of the said contracts. And further
220 that any money remaining in the hands of the said Riley,
after completing all of the contracts herein referred to, and
liquidation of all just debts connected therewith, shall be held by
the said Riley to be paid to the said Baldwin and Peake, respect-
ively, as their interests may be hereafter agreed upon, or may be
otherwise settled. And it is further agreed that the said Baldwin
and the said Peake will not either of them attempt to collect from
the United States or District of Columbia governments any money
due or to become due upon the contracts herein referred to, and that
they will not either of them enter into any agreement or incur any
liability for the said firm relating to the said above-referred-to con-
tracts during the continuance of this agreement, except as the said
Riley shall request, and that they will do any and all act or acts in
furtherance of the completion of said contracts as the said Riley
shall request, including their best personal services and assistance
in completing the same. And the said William C. Peake hereby
agrees to turn over, upon the execution and delivery of these pres-
ents, unto the said Riley any money received by him by reason of
said contracts, or either of them, not heretofore applied to the pay-
ment of the indebtedness of said firm, and further that this agree-
ment shall continue until the full execution of the contracts referred
to, and settlements made in reference thereto by the said Riley,

unless sooner terminated by mutual agreement, and notice in writing, on the part of the parties hereto of the first part and second part, who also hereby agree to make any further paper or papers during the continuance of this agreement, to carry into effect
 221 its terms, as the said Riley may be advised by counsel to be necessary or desirable.

In witness whereof the said parties hereto of the first and second parts have hereunto set their hands and seals on the day and year first above written.

_____. [SEAL.]
 _____ [SEAL.]

Signed, sealed, and delivered in the presence of—
 _____.

Motion to Modify Restraining Order.

Filed April 22, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL. }
 vs. } Equity. No. 20227.
 THOMAS R. RILEY ET AL. }

Now come Thomas R. Riley, Samuel Ross, and S. Dana Lincoln and move the court to modify the restraining order heretofore passed in this cause, so as to permit said Riley, Lincoln, and Ross to pay to the White Hardware Company of Norfolk, Virginia, the sum of \$635.00, being the amount due said White Hardware Company for supplies furnished said Riley, Ross, and Lincoln, and used by them in completing the life-saving stations mentioned in the proceedings
 222 had in this cause, said Riley, Lincoln, and Ross having sufficient funds in their hands for the purpose of paying said bill, if allowed to do so by the order of this court.

M. J. COLBERT,
Solicitor for Defendants Riley, Ross, and Lincoln.

Order Granting Leave to File Amended Cross-bill.

Filed June 24, 1899.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

RICHARD ROTHWELL ET AL. }
 vs. } Equity. No. 20227.
 THOMAS R. RILEY ET AL. }

Upon consideration of the application on behalf of defendant William C. Peake in this cause for leave to file an amended cross-bill, it is thereupon, this 26th day of June, A. D. 1899, ordered, ad-

judged, and decreed that said application be, and the same is hereby, granted and the said William C. Peake is hereby authorized and allowed to file said amended cross-bill, and to attach thereto as a part thereof the exhibits accompanying his original cross-bill, filed in this court on the 16th day of March, 1899, and that said amended cross-bill be substituted for and to take the place of the original cross-bill and to have the same force and effect as if filed with leave of court on the said 16th day of March, 1899.

W. S. COX, J.

223 *Order of Court Approving Payments Made by Receivers.*

Filed December 22, 1899.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

Upon consideration of the second report of the receivers filed herein on the 22d day of December, 1899, it is by the court this 22d day of December, 1899, ordered that the payments made by said receivers, pursuant to the order heretofore passed herein and as shown by said report, be, and the same are hereby, ratified and approved, and that said order passed herein on the 1st day of Oct., 1899, be, and the same is hereby, modified and suspended so far as it applies to and requires the immediate payment of the several claims set forth in the schedule annexed to said second report of the receivers and not paid by them, and that this cause so far as it affects said claims be, and the same is hereby, referred to the auditor to receive such testimony as may be adduced in support of said several claims, and to report as to the validity thereof.

JOB BARNARD, *Justice.*

224 *Testimony on Behalf of Complainant.*

Filed January 26, 1900.

In the Supreme Court of the District of Columbia.

WILLIAM C. PEAKE, Complainant,	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL., Defendants.		

Testimony on behalf of complainant in support of amended cross-bill.

WASHINGTON, D. C., *December 30th, 1899,*
1.30 o'clock p. m.

Met, pursuant to request of counsel for complainant, at the office of solicitor for complainant, in the Fendall building, Washington, D. C., on Saturday, December 30th, 1899, at 1.30 o'clock p. m.

Present: Mr. Wright, on behalf of complainant.

And WILLIAM C. PEAKE, the complainant herein, being produced as a witness on his own behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. WRIGHT:

Q. Mr. Peake, please state your full name. A. William C. Peake.

Q. What is your address? A. My address is 121 10th street N. E., Washington, D. C.

225 Q. Are you a member of the firm of Baldwin & Peake? A. Yes, sir.

Q. Mr. Peake, please state when that partnership was formed and what were the objects of the partnership. A. The partnership was formed on the 3rd day of June, 1898, for the purpose of conducting the contracting and building business for the Government.

Q. Now, will you state the circumstances which led you to enter into this contract? A. Well, I was on a bond for Mr. Frank Baldwin for the construction of an addition to the Bureau of Engraving and Printing and the construction of a quarentine station near Wilmington, North Carolina, and in the construction of these two works Mr. Baldwin defaulted, and as bondsman in those contracts I had to make good the shortage on the debts he owed, which amounted to about \$2,700, as near as I can tell, and then there were representations made to me by Mr. Baldwin himself that he would make good that loss to me if I would enter into partnership with him in the contracting and building business; and that is the reason I entered into it, as I expected to get back this loss I had sustained by being on his bond.

Q. Mr. Peake, was that money to be received back by you before there was any division of the profits of the partnership? A. Yes; before there was any division made. That was the understanding between Mr. Baldwin and myself. There was not any stipulated amount whatever; just what I lost. He did not say \$2,700, but the amount I lost.

226 Q. As his bondsman under these contracts you mentioned? A. Yes, sir.

Q. Mr. Peake, I want you to look at that and state what it is (handing witness paper). A. That was the articles of agreement entered into between Mr. Frank Baldwin and myself.

Q. Is that your signature (indicating)? A. Yes.

Q. Is that Mr. Baldwin's signature? A. Yes, sir.

Q. You identify that as the contract between you and Mr. Baldwin? A. Yes, sir.

Q. Have you ever seen Mr. Baldwin write? A. Yes.

Q. Are you familiar with his handwriting? A. Yes.

Q. And you identify this as his handwriting (indicating)? A. Yes; I saw him sign it (indicating Exhibit No. 2 to the amended cross-bill).

Q. Mr. Peake, who advanced the capital for the carrying out of this partnership contract between you and Mr. Baldwin? A. I did.

Q. What was Mr. Baldwin to furnish? A. He was to do the mechanical part of the business, such as superintending the work, purchasing materials, and such things as that.

Q. And what were you to furnish in the contract? A. I
227 was to furnish the necessary capital to carry on the work and give my attention to the financial part of it.

Q. No- was it or was it not understood between you and Mr. Baldwin that he was to pay you back this money that you had advanced for him on these contracts? A. That was to come back, certainly, out of the contract money. That was to be returned to me out of the money as it was collected, but it never was returned to me.

Q. Mr. Peake, was that return to be made to you before any division of the profits took place between you and Mr. Baldwin? A. Yes, sir; certainly.

Q. Also the advancement you made yourself? A. Yes, sir.

Q. Mr. Peake, your firm was known as the firm of Baldwin & Peake, was it? A. Yes, sir.

Q. Did you have any contracts for the construction of life-saving stations for the United States Government? A. Yes, sir.

Q. Will you state, Mr. Peake, in your own words what contracts you and Mr. Baldwin had? A. We had a contract to build three life-saving stations on the Virginia coast. There was Caffey's inlet, False cape, Dam Neck Mills, and Hog island. Hog island was on the North Carolina coast and the other three were on the Virginia coast.

Q. What other contracts did you and Mr. Baldwin have?
228 A. We had a contract to build a post-office at Allegheny and contracts to build the Western high school at Washington, the Eckington school-house, Peabody school-house, and the Toner school-house in this city. I guess that was all.

Q. Did you have any contract for building at the Government Hospital for the Insane? A. Yes; we built three buildings over there at the Government Hospital for the Insane. It was really one building. They call it the pavilion building. There were three buildings all in one.

Q. Did you complete these various contracts? A. We completed the Western high school, the pavilion buildings at the asylum, and the Allegheny post-office. They were all completed; then we had the trouble.

Q. What trouble? A. Well, I found that Mr. Baldwin had gotten to drinking very hard and was misbehaving himself in a very outrageous manner, and I called his attention to it several times, and he promised to do better on several occasions. I found out he was not giving the attention to the work he ought to, and as a consequence the work was all being neglected and going behind, and I refused to allow him to have any more funds out of the firm until the work was completed. He objected to that and, of course, that

was the cause of the trouble—my refusing to let him have any more funds out of the firm on account of his behavior and neglect of the work—that is, funds for his private use.

Q. Did you complete the life-saving stations? A. No, sir; we did not.

229 Q. Mr. Peake, when was it that this misunderstanding or difficulty occurred between you and Mr. Baldwin? A. The first part of it, do you mean, or the termination?

A. I mean after you entered into the contract. How long after that did the drinking you complained of take place? A. From the time we entered into the contract up to the culmination of it, do you mean?

Q. I mean what was the time of the culmination of it? A. It was the early part of August, 1898.

Q. Mr. Peake, at this particular time, the time of this trouble, what did you find as to the condition—that is, the solvency or insolvency—of the firm? A. I found it was insolvent after examining the books, &c.

Q. Were you able to complete your contract? A. I don't think we would have been.

Q. What steps, if any, did you take for the carrying out of your contract? A. For having the contracts completed, do you mean?

A. Yes. —. I will tell you what was done. When I found out that Mr. Baldwin was determined to either have the money or make trouble—and I knew there was not enough money in the firm to allow him to have any—I consulted with the creditors of the firm, and we all called a meeting of the creditors at Mr. Thomas R. Riley's office—but I am a little ahead of my story. Mr. Baldwin told me he was going to ask for a receiver for the concern. I consulted with

Mr. Thomas R. Riley in that relation, and he said that if he
230 did have a receiver that it would eat up the resources of the firm and there would not be any money for the creditors, and he advised me to have a mutual understanding with Baldwin to allow a committee of the creditors to have charge and complete the work. We then called a meeting of the creditors down at Mr. Riley's office, and there Mr. Baldwin and the balance of us all agreed to allow Mr. Thomas R. Riley to take charge of the work and complete it, with the distinct understanding that there was not to be any compensation to him.

Q. Was Mr. Riley one of the creditors? A. He was one of the creditors, and he agreed to take charge of the finances and the work in the interest of the creditors without compensation. Then he took charge of it.

Q. Now, Mr. Peake, I will ask you to state how this arrangement with Mr. Riley was consummated. I mean state the facts leading up to that agreement and how the final agreement was entered into. A. Well, as I told you, he wanted money and I refused to let him have it, and then there was a meeting of the creditors, and after the meeting of the creditors everybody agreed to allow Mr. Riley to take charge of the work and collect all the money that was due on

the work, and first pay the debts that were contracted during the progress of this work, and then the balance was to pay what debts were owing on the work done, and whatever was left then was to be turned over to Baldwin and myself to be settled amongst ourselves. At this meeting it was distinctly understood and agreed that Mr. Riley was not to pay any debts of previous contraction by the firm of Baldwin & Peake, nor was he to expend any money except in the completion of the work done, without the approval of myself.

231 He violated that agreement from the first. He never consulted me about the expenditure of any money and went on wasting money. In the first place, he wasted \$100 a month on the employment of Baldwin riding around the streets on a bicycle, which I protested against all the time. I continued to protest against his expenditure of the money, and after he collected about \$30,000 I asked him then to let me know what he did with the money and asked him for an accounting, and he always told me he would let me know; but he has never given me an accounting of this money and has refused to do it and never has to this day. When he refused to make an accounting to me of the expenditure of this money I protested against his getting any more money until he did account for it. I considered he was spending the money recklessly. During the progress of the work and my protestations against his spending the money recklessly and making the protestations to the salary, he paid him for one thing for attending to the business, and he then told me he associated with himself a committee of Lincoln and Ross, and in all my protestations I made to him he referred to a committee, and I invariably told him I knew nothing about the committee and there was nothing said about it in the agreement.

Q. I want you simply to state all the facts and circumstances pertaining to any written agreement you made with Mr. Riley. A. Then, after this agreement amongst the creditors agreeing to transfer this business to Riley for settlement, he employed Gordon and Gordon to look out for his interest in this affair and in regard to having his part of this agreement correct, and I employed

232 Mr. Darlington. Gordon & Gordon drew up an agreement for me to sign and I refused to sign it until I submitted it to Mr. Darlington for his advice.

Q. Mr. Darlington was your attorney then? A. Mr. Darlington was my attorney then, and he took the agreement and read it over and advised me not to sign it unless there were certain corrections made in it, and he wrote on the margin of the original agreement certain corrections to be made in the agreement previous to my signing it.

Q. I want you to look at this agreement, Exhibit No. 1 to the cross-bill, and state if that is the agreement you refer to. A. Yes; that is the agreement that Gordon & Gordon drew up for me to sign in the first place, and which I refused to sign until after consultation with Mr. Darlington. He then erased certain things in it and wrote marginal notes on it, which are there now, and which

were to be incorporated in the agreement I signed, with the understanding it was to be an exact copy of this agreement. I signed it, but I afterwards found out that the marginal notes had been left out entirely.

Q. When did you find out that those marginal notes put there by Mr. Darlington had been left out? A. Not until long after Mr. Riley had control of this work and had collected most of the money. That is the original agreement there that was submitted to Mr. Darlington, which he advised me not to sign (indicating said agreement).

Mr. WRIGHT: I offer this agreement in evidence, which is Exhibit No. 1 to the original cross-bill.

233 Q. Mr. Peake, according to your understanding, how were the payments to be apportioned by Mr. Riley in reference to funds derived from the buildings? A. In the first place, they were to go to the completion of those jobs, and afterwards they were to go to pay the debts contracted for in the work, each separate job. That was a distinct understanding. Amongst the debts to be paid, which I advised very strongly to be paid among the first, was a note at the National Capital bank.

Q. What, if anything, was said by Mr. Riley to you or in your presence prior to your agreeing to allowing him to manage the work leading or tending to lead you to believe that the active connection therewith by Mr. Baldwin would be avoided in the future? A. Well, he told me several times that Mr. Baldwin was mismanaging the work, and it would be to my interest greatly to allow Mr. Riley to take charge of the work and to allow him to complete it; that he had no faith in Baldwin and never did have any, and that all of his dealings with the firm had been because I was connected with —, and the only reason why he let the firm have any material at all was because I was connected with it, and he did not and would not trust Mr. Baldwin for five cents' worth of lumber or material, and he professed great friendship for me until after he got control of the work. Then he reversed himself and was hand-and-glove with Baldwin in all the transactions and I was ignored entirely, notwithstanding my protests against it, and he even went to work to employ Baldwin at a salary of \$25 a week, as he said, to superintend the work. Baldwin was not on the work two hours a day. I cannot say exactly, but I was at the work time and time again and never saw Baldwin about it.

234 Everything was being mismanaged. I went to Mr. Riley and told him all the circumstances about the work being mismanaged, and he said if he had his way he would not have employed Baldwin and objected to it, but the balance of this so-called committee overruled it. I knew who they were, but he always told me that they overruled him in employing Baldwin; that he did not have any use for him and if he had his way he would not have him. He told me time and time again he would not have him, and several employee- he had I protested against.

Q. Mr. Peake, did you ever recognize this committee which you have spoken of as a so-called committee? A. Never; all my dealings and all my protests were always with Riley.

Q. Did you give Mr. Riley any authority to associate with him any one else under this agreement? A. I protested against it as soon as he told me he had connected himself with this committee.

Q. As a matter of fact, would you have chosen any of these parties whom Mr. Riley associated with himself as a committee? A. I would have most positively objected and did at the meeting of the creditors, one in particular when he was suggested to go on the committee. I raised my objection and said I did not want him and said I did not want to have anything to do with it. The one in particular

I did object to was Ross.

235 Q. Mr. Peake, you spoke about Mr. Riley receiving money from time to time. I want you to state how you know Mr. Riley received this money from time to time. A. I went to the District government—to the auditor's office—and endorsed the checks over to him payable to Baldwin and Peake.

Q. Mr. Peake, do you know how much money Mr. Riley received? A. Yes, sir; I know within a few dollars.

Q. Do you know it of your own knowledge? A. Yes, sir; I do know it of my own knowledge, because I endorsed these checks over to him.

Q. How much was it? A. About \$29,000.

Q. Did Mr. Riley ever render you any account for those moneys? A. No, sir.

Q. Did you ever call on him for any accounting? A. Yes; I called on Mr. Riley, I guess, a dozen or fifteen times. I went myself and then I took friends with me and got them to persuade Mr. Riley to make a statement of the expenditures. He always said he would do it, but he never did, which I construed into a refusal. I agreed at one time to pay a book-keeper and typewriter if he would have it done out of my own pocket, but he refused to do it by not doing it.

Q. Under the articles of agreement between yourself and Mr. Baldwin, did Mr. Baldwin ever draw any funds out of the firm? A. Yes, sir.

236 Q. Can you state about how much he took out of the funds of the firm? A. Do you mean how much he had doing the progress of the partnership?

A. Yes. Q. As near as I can come at it, between five and six thousand dollars.

Q. Do you know whether he expended that for the firm business? A. He did not expend any of that for the firm business; no, sir.

Q. Do you know what he did with it? A. I do not.

Q. Has he ever rendered you any accounting of it? A. No, sir.

Q. Have you ever asked Mr. Baldwin to account to you for this money you say he took out of the firm fund? A. I have asked him several times, but he would always say he used it in his private affairs.

Q. Mr. Peake, do you mean that this sum, between five and six

thousand dollars that you spoke of, was over and above what was coming to Mr. Baldwin as his share of the profits? A. Yes; because on account of his mismanagement of the work there was no profit attached to the firm. There was no profit to divide. He just took that much money. He was to have \$100 a month. He ought to have had about \$1,800, and instead of that he had about \$5,000.

Q. To go back now to the life-saving stations. In the progress of that work what, if any, funds were necessary to be raised in
237 supplying labor and materials? A. We needed in the neighborhood of \$1,300 at one time and \$2,100 at another time. It was necessary to have that money.

Q. You said \$2,100 the next time? A. Yes, sir; it was necessary to have the funds to conduct the work with. The work had stopped and the firm did not have any money to conduct the work with. I was then dealing with the National Capital bank, and I went there and asked them if they would give me a discount on a note, in the first place, for \$1,300, and afterwards for \$2,100. They agreed to do it if I would get an endorser and would leave Baldwin's name off the note. I asked the president of the bank what his objection was to have Mr. Baldwin's name on the note, and he said Baldwin was no good and he could not be connected with it. I said that I wanted to use it in the firm work, and he said to make out my individual note and have Mr. William Wiffhaft endorse it and he would discount it for me with the distinct understanding with him and Mr. Witthaft that as soon as I got the money from the life-saving stations we would take up the note. I told him I would do it. He discounted the note for me and I put it to my credit in bank. I then transferred the amount of the note to the credit of Baldwin and Peake, and then disbursed that money in paying labor and material on the life-saving stations on the Virginia coast, Caffey's inlet, False cape, Dam Neck Mills, and Hog island, on the North Carolina coast. I frequently told Mr. Herrell and Mr. Witthaft, the endorser on the note, that in a few days or weeks we would have the money
238 from the life-saving stations, that we would complete the stations and get the money and take up the note, and before having the note discounted, or before getting the money at all, I consulted with Baldwin in regard to it, and he told me it was necessary to have the money, which, of course, it was, as the work had been stopped and we would have been under terrible expenses down there by the forfeiture of time money; and the work being stopped, the Government was threatening to take it away from us two or three times, and I could not say anything because we had no money, and I borrowed the money and put it in the life-saving stations with Mr. Baldwin's knowledge and with the understanding with him that when we got the money we would take up the note.

Q. Mr. Peake, you said that Mr. Witthaft endorsed this note. What, if any, representations were necessary in order to get Mr. Witthaft to make this endorsement for you? A. I stated the whole circumstances to him. I told him I was having these contracts on the coast and how far we had proceeded with them, and that they

had stopped on account of want of funds, and that the only way I could get it would be for him to endorse the note. He told me that he would endorse the note with the distinct understanding that I would certainly take it up when I got those funds, and I gave him my pledge that I would take it up as soon as I got hold of the money, and just about the time I was to get the money Baldwin created this row and I did not get it, but Mr. Riley got it, and when he got it I asked him a dozen times to take care of the note, and he always told me that as soon as he got the funds he would take care of it.

239 Q. Mr. Peake, did Mr. Baldwin understand the facts and circumstances under which you got this money and got Mr. Witthaft's endorsement? A. Yes. The president advised me to go to Mr. Witthaft and get his endorsement if I could. We were hunting around for an endorser, and he advised me to go to Mr. Witthaft.

Q. Did you or did you not agree with Mr. Witthaft and the bank that the funds to be derived from the completion of these life-saving stations should be first applied to the payment of the obligations mentioned? A. I certainly did, sir; several times.

Q. Before the money was obtained? A. Yes; and at the time he endorsed the note I agreed to do it.

Q. State if you know and how you know that the particular funds so raised were actually expended for supplying labor and material on these life-saving stations. A. In the first place, as soon as this note was put to my credit in the bank I held it in reserve to supply money to the life-saving stations, to complete them. I would ascertain from the superintendent down there how much money was needed to pay off the hands. I would then deposit the money to the credit of Baldwin and Peake with my individual check and would then give Baldwin and Peake's check to these superintendents, so they could pay off the men at the stations. I would frequently get their receipts for the same, and, in the absence of positive proof, and not knowing that the money was being especially applied for the purpose, I visited the stations myself and inquired of

the men who were furnishing the materials and labors to those
240 stations if they were paid at a certain time when I sent this money there, and I always found that they had been paid on that day, and that the money I sent to the superintendents and foremen was the money directly derived from this discounted note, without a doubt; that money was used on the stations without a doubt, and I know it was, because I went down to see whether it was; and I still state further that part of the money I took myself and paid. I visited those stations myself on one occasion, and there was a dispute amongst some of the men that they had not received part of the money due them, and I took the money and paid them myself. Of course, that was not very much, but it was some. They had not been paid some of their money. Some had some small amounts due them.

Q. Was or was not this money necessary to the continuance of

work on those stations? A. It was absolutely necessary, because the work had stopped—part of it.

Q. State, if you know, the present status of this obligation at the bank. A. I know it has not been paid by me, and it has not been paid by the firm of Baldwin & Peake, so I suppose it is still lying in the bank. When the \$1,300 note was due and the \$2,100 note was due we hadn't collected the funds for the life-saving stations to pay them, so we just coupled those in the one note, making a \$3,400 note, calculating to get the money from the life-saving stations in one month.

Q. What is the date of that one note? A. On August 11th, 1898, we took the two notes and put them into one note—that was
241 the \$1,300 note and the \$2,100 note.

Q. What, if any, credits have been made on that note by you or the firm of Baldwin and Peake? A. On August 22nd, on the advice of Mr. Baldwin as well as other parties, I paid \$481 on the note, and on September 17th, 1898, I paid \$17 interest on the note, and on September 12th, 1898, the amount of the obligation at that time left standing was \$2,719, which amount is still due the National Capital bank so far as I know. It has never been paid off by me or Mr. Riley, although he said he would pay it. This is the exact condition of the note as it lies in the National Capital bank now. This copy of note was furnished to me by the cashier of the National Capital bank. The reason why I made it a one-month note in that case was because the life-saving station was nearly completed and we calculated in two weeks we would complete it and get the money from the life-saving station and pay it, and it was so understood by Mr. Witthaft, the endorser, and the bank.

Mr. WRIGHT: I offer this paper in evidence, to be marked Exhibit A.

Q. State whether or not Mr. Riley has been brought to understand this matter, and what, if anything, he is known to have said to convey to the bank relative to its payment at the proper time.

A. Well, I cannot state exactly what he said to the bank, but he told me as soon as the life-saving stations were completed and he got the money he would take up the note. I also believe he said that to the representatives of the bank, but I cannot say that. He told me to tell

the bank that and he told me that. He told me one day he
242 received a notice from the bank in regard to that note, and

he said, "You know I cannot pay anything in relation to that note until after we get this money." And I said, "They are anxious about it;" and he said as soon as he got the money and gets things straightened out they will get it. He says, They cannot get it before I get it. Then he was talking about the money from the life-saving stations. That was the understanding at that time, because I made it so very plain to him that that money had been used down there in those life-saving stations when Mr. Riley took charge of the work. Two of them were completed; the Dam Neck Mills was completed and False cape was completed, and Caffey's

inlet was very near completed. It was reported to us by the foreman and reported to Mr. Riley by the superintendent at the station, and also by the Government superintendent, that it would only require about \$700 to complete all three of those stations, and he had about \$13,000.

Q. That is, when you had this conversation? A. Yes.

Q. Not when the money was given? A. No, sir.

Q. State whether or not the firm of Baldwin & Peake is now insolvent. A. Undoubtedly they are.

WILLIAM C. PEAKE.

Subscribed and sworn to before me this 30th day of December, 1899.

JOHN A. SWEENEY, *Examiner*.

Whereupon an adjournment was taken subject to notice.

J. A. SWEENEY, *Examiner*.

243

FRIDAY, *January 5th*, 1900—10 o'clock a. m.

Met pursuant to request of counsel for complainant.

Present: Mr. Wright, on behalf of complainant.

Whereupon WILLIAM PENN POOLE, a witness produced in the same behalf, being first duly sworn, testified as follows:

Direct examination.

By Mr. WRIGHT:

Q. Mr. Poole, where do you reside? A. At Dunloring, Fairfax county, Virginia.

Q. What is your business? A. Builder.

Q. What business were you engaged in in 1898? A. Well, I was employed by Baldwin & Peake as their manager at the life-saving stations.

Q. And you worked for Baldwin and Peake in what capacity? A. As superintendent or manager down there.

Q. In what work were they engaged there? A. In the life-saving stations.

Q. What life-saving stations were they engaged in building? A. Hog island, False cape, and Caffey's inlet.

Q. In what capacity were you employed there? A. Well, I was superintendent on that work.

Q. And as such superintendent, did you have charge of the receiving and disbursing of the money for Baldwin & Peake?

244 A. Yes, sir.

Q. Were you there on April 13th, 1898? A. Yes; I was there.

Q. About what time, Mr. Poole, did you leave there? A. Well, it was the latter part of July.

Q. Of the same year? A. Of the same year; yes, sir.

Q. Mr. Poole, I will ask you to look at that paper and state if you identify it (handing witness check). A. Yes; I remember that.

Q. Did you receive that amount? A. I did.

Q. Look at that paper and see if you identify it. A. Yes; I remember that (indicating check).

Q. Did you receive that money? A. Yes, sir.

Q. Look at that paper and say whether you received that money (handing witness check)? A. Yes; I received that.

Q. Look at that paper and state if you received it (handing witness receipt)? A. Yes; I received it.

Q. Look at that paper and say if you received the money on that (handing witness receipt)? A. Yes; I received it.

Q. Mr. Poole, I want you to look at the first check I handed you and state how the amount of that check was disposed of by you. A. For labor and material on those stations. I think this was on Caffey's inlet and False cape.

245 Mr. WRIGHT: I offer this check in evidence, to be marked Exhibit No. 1.

Q. Look at that check and state how the amount was disposed of by you. A. \$350 was for Hog island, \$325 was for False cape, and \$130 for Caffey's inlet, for labor and material.

Mr. WRIGHT: I offer that check in evidence, to be marked Exhibit No. 2.

Q. Please look at that one and state how the funds in that check were disposed of. A. Well, \$400 of this went to the White Hardware Company, and the remainder I checked to Mr. Dodge for Caffey's inlet and False cape.

Q. That paid to the hardware company was a claim of theirs for materials? A. Yes; it was paid for materials on those stations.

Mr. WRIGHT: I offer that check in evidence, to be marked Exhibit No. 3.

Q. What is that (handing witness receipt)? A. That is a receipt. I remember receiving that. It is a receipt for \$500.

Q. Will you state how that was disposed of by you? A. For labor and material. I think it mostly went for material on the two lower stations, not Hog island.

Mr. WRIGHT: I offer this receipt in evidence, to be marked Exhibit No. 4.

Q. Please look at that receipt and see if you identify it. A. I received that all right.

Q. That is a receipt for what? A. A receipt for money I received from Baldwin & Peake, \$225. I received that on board of the Norfolk steamer at Washington.

Q. That was expended the same way? A. The same way. That was paid for board bill.

Mr. WRIGHT: I offer that receipt in evidence, to be marked Exhibit No. 5.

Q. You paid the board bill for the laborers? A. Yes, sir; for the laborers and mechanics.

Q. In what capacity was Mr. Dodge employed? A. He was foreman.

Q. Under you? A. Under me, at the lower stations, Caffey's inlet and False cape.

Q. Mr. Poole, do you know how that money you sent to Mr. Dodge was disbursed? A. He paid off labor and board bills with it.

Q. How do you know that? A. I was down there afterwards and knew the men received their money.

Q. And that the board was paid? A. Yes, sir.

W. P. POOLE.

Subscribed and sworn to before me this 30th day of December, A. D. 1899.

Whereupon an adjournment was taken to meet subject to notice.
J. A. SWEENEY, *Examiner*.

247 In the Supreme Court of the District of Columbia.

WILLIAM C. PEAKE, Complainant,	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL., Defendants.		

DISTRICT OF COLUMBIA, ss:

I, John A. Sweeney, an examiner in chancery of this court, do hereby certify that the foregoing depositions of William C. Peake and William Penn Poole were taken down by me, by agreement of counsel, in shorthand in the presence of and from the oral statements of the said witnesses, and after the same were reduced to typewriting they were read over by the said witnesses and by them subscribed, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties hereto or in any manner interested in the result hereof.

J. A. SWEENEY,
Examiner in Chancery.

248 *Order Directing Receivers to Pay Certain Claims.*

Filed October 11, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

Upon consideration of the report of the temporary receivers filed herein on the 14th day of March, and of the reports of the receivers

filed herein on the 1st day of August and the 22nd day of December, 1899, the orders of this court passed herein respectively on said 1st day of August and 22nd day of December, 1899, the report of the auditor filed herein on the 27th day of September, 1900, as to the validity of the claims and of the testimony taken in support thereof, and it appearing to the court that the claims of W. P. Poole for three hundred and twenty-five dollars, of Edward Dodge for two hundred and fifty dollars and seventy-three cents, of Henry Dodge for five hundred and eleven dollars and sixty-two cents, of the Jenkins Paint and Oil Company for one hundred and seventy-five dollars, and of Lyman Robinson for two hundred and seven dollars and forty-seven cents were not disputed and have been fully proven, it is by the court this 11th day of October, 1900, adjudged, ordered, and decreed that said claims are true and valid, and the receivers herein are hereby authorized and directed to proceed immediately to pay the same out of the funds in hand for the purpose in accordance with said order of this court as passed herein on the 1st day of August, 1899, and as agreed with the Secretary of the Treasury as a condition precedent to the remission of the penalties on the contract under which said funds were derived.

JOB BARNARD, *Justice*.

250

Extracts of Testimony Taken before Auditor.

Filed October 19, 1900.

* * * * *

MARCH 30TH, 1900.

Mr. E. L. Schmidt presents claim against W. C. Peake for \$1,500.00 on an assignment of any monies in cause 20227.

Joseph Fanning presents the following claims: Eckington school, 6.00; Peabody school, 95.62; school at corner of 24th & F streets, —? (See bill on file.)

* * * * *

W. C. PEAKE, having first been duly sworn, testifies as follows:

By Mr. LAMAR:

Q. Please state your name. A. W. C. Peake.

Q. You were one of the firm of Baldwin & Peake? A. Yes, sir.

* * * * *

Mr. Lamar offers in evidence the power of attorney from Baldwin & Peake to Mr. Riley.

Q. What is the physical condition of Mr. Witthaft—would it be possible for him to attend here? A. No; it would be impossible; he is very feeble.

* * * * *

251 HENRY H. McKEE, having first been duly sworn, testifies as follows:

By Mr. LAMAR:

Q. Please state your name. A. Henry H. McKee.

Q. What is your present business? A. Cashier of the National Capital Bank of Washington.

Q. Were you such officer in August, 1898? A. Yes, sir; and have been since.

Q. Mr. McKee, are you familiar with the handwriting of W. C. Peake? A. Yes, sir.

Q. Is that Mr. Peake's handwriting on that note? (Hands witness note.) A. Yes, sir.

Q. You have seen him write? A. Yes, sir.

Mr. Lamar files as evidence in this case the note dated August 11th, 1898, signed by W. C. Peake, payable to the order of William Witthaft one month after date, for \$3,400.00.

— Mr. McKee, will you state what, if any, payments have been made on that note? A. \$481.00 on August 22d, 1898, and 17.00 on September 12th, 1898. I do not know by whom the payments were made.

Mr. Thomas objects to the introduction of the note in evidence, as it is an obligation of W. C. Peake's and not of Baldwin & Peake.

252 Mr. Lamar states that he will file the decree of the court on the cross-bill under date of December 4th, 1899, in which this note was—

The auditor states that this matter will not be taken up at this time.

Q. Mr. McKee, state whether or not the waiver of protest that appears on the back of that note signed by Mr. Witthaft was made before the note became due. A. Yes, sir.

Q. Who, is any one, paid the balance due on that note other than the two payments you have just mentioned? A. The balance was paid by Mr. Witthaft.

Q. When? A. On the third of March.

Mr. Lamar offers in evidence in this case the record in the cross-bill, including the evidence taken in support.

* * * * *

Testimony of Thomas R. Riley.

Q. Do you remember on July 29th, 1898, that Mr. Peake paid you in two different checks—one of 3,043.12 and another of 1,373.20; do you remember those two payments? A. No, sir.

Q. You don't remember those two payments? A. No, sir; I remember that Mr. Peake gave me several orders on the auditor of the District, and then he endorsed some checks and left them with the auditor, Mr. Petty. Mr. Petty turned them over to me, inform-

ing me that there was a check for 1,368.00 against which the Baltimore Brick Company had a claim. To get that check I had to give my check for \$550.00 to Mr. Petty. I don't remember what
253 date in July it was those checks were turned over to me.

* * * * *

Q. Please collect them and bring them here. I wish you would state in addition to what is shown on that account whether you made any trips to the life-saving stations. A. I went to Norfolk, but never to the stations.

Q. How often? A. Once.

Q. What were your expenses? A. Very small.

* * * * *

THOMAS R. RILEY, having been recalled, testifies as follows:

By Mr. BRANDENBURG:

Q. After the appointment of the receivers in this cause you had in your hands possibly between 700.00 and 800.00? A. Yes, sir.

Q. You paid that out after the injunction in this case? A. Yes, sir.

Q. That amount was paid the White Hardware Company? A. The White Hardware Company had a bill for 625.00 for material used at Hog island, and they agreed to accept 600.00 in full payment of that claim.

Q. Was that for material furnished before or after you, as one of the committee, had taken charge of the completion of the
254 work? A. It was taken after the committee took charge of the balance of the fund. 150.00 was paid to D. M. Weeks, the contractor, for finishing up the station.

Q. Hog island? A. Yes, sir.

Q. That was after the committee had taken charge? A. Yes, sir.

Q. You endeavored to procure a consenting order before you paid it? A. Yes, sir; and counsel in the case refused. I was advised to pay it.

Q. Did Mr. Douglass consent? A. It was Mr. M. J. Colbert who advised it.

Q. The other counsel would not consent? A. That I don't know.

Q. You were aware of the injunction? A. Yes, sir.

* * * * *

Testimony of Samuel Ross.

SAMUEL ROSS, having been duly sworn, testifies as follows:

By Mr. MADDOX:

Q. Please state your name. A. Samuel Ross.

Q. What is your business? A. Merchant.

Q. What sort of merchant? A. Builders' supplies principally.

Q. Iron? A. Yes, sir.

255 Q. Did you know the late firm of contractors known as Baldwin & Peake? A. Yes, sir.

Q. Did you have any dealings with them in 1898 and 1899? A. Yes, sir; in 1898, principally.

Q. What were they? A. Furnishing material for school-houses, at the Asylum, and life-saving stations.

Q. Taking up the school-houses, what did you furnish for the Western high school? A. Hardware.

Q. The amount of the bill? A. \$1,108.77.

Q. Was that bill paid? A. Yes, sir.

Q. In full? A. Yes, sir.

Q. What was the next school-house? A. There were three school-houses—Eckington, Peabody, and 24th & F streets.

Q. What did you furnish there? A. The Asylum job comes in before that.

Q. Just get through with the schools first. A. We furnished hardware for the Eckington school, and some little bits of what are termed mill-work. In completing that work, part of it I did as bondsman. At the Peabody school we furnished the iron-work and hardware and some glass. That was all on that. 24th & F we furnished the mill-work, iron-work, and hardware.

256 Q. What is the aggregate of the bills on those three? Have you got it? A. I have got the balance due on each one.

Q. What is the balance due on account of the three school buildings? A. The balance due on those three jobs after payments, as shown, is 154.31, and in addition some little bills of freights amounting to 3.29.

* * * * *

SAMUEL ROSS, having been recalled, testifies as follows:

By Mr. MADDOX:

Q. Can you find the pulley item in the Peabody school? A. Yes, sir; I testified about that. It is twenty-five pulleys at 3.00. There were some transoms there that didn't have them in—in the basement. Mr. Bruce, the superintendent of that building, had me get them up.

Q. Who was he? A. Superintendent for Baldwin and Peake.

Q. They were not a part of the contract? A. No, sir.

Q. Tell us something about the committee—Riley, Lincoln, & Ross, who figure in these accounts. A. There was a meeting of the Baldwin & Peake creditors held at which each of them agreed to let these various contracts go on into the hands of Riley, Lincoln, & Ross.

By Mr. DOUGLASS:

Q. Is that in writing? A. I don't think it is.

257 Q. I have seen it. A. Yes, sir; I believe it is. The Commissioners compelled me as bondsman to complete the Toner School building, which was the only one of these buildings that was not completed. The payments received from that were turned into the hands of Riley, Lincoln, and Ross. As I would get a check

from the Commissioners I would turn it over to Mr. Riley, so that he as treasurer of that committee handled the money.

Q. Why were bills made out to Riley, Lincoln, and Ross? A. Because they were finishing up the building.

Q. Did Baldwin and Peake remain nominally in charge? A. Mr. Baldwin was at the building all the time. I had little to do with Mr. Peake.

Q. Who was Mr. Bruce? A. The superintendent employed by the District on the Peabody School building.

Q. How long have you been in the hardware business? A. About twenty-five years.

Q. Furnished a great many contracts in that time? A. Yes, sir.

Q. Was it an usual or unusual thing if a contractor has completed his contract he has to furnish articles that—

Mr. Douglass objects. Objection is sustained.

Mr. Ross: Mr. Baldwin was employed and paid a salary to superintend the completion of the building at 24th & F Sts.

258 Q. By Riley, Lincoln, & Ross? A. Yes, sir; I think he got 25.00 per week.

Q. So Mr. Baldwin was in the employ of Riley, Lincoln, & Ross? A. He would not work without we paid him a salary. The creditors were spoken to about it, and as the contracts were terribly mixed up we thought it would be money saved.

Q. Did Mr. Peake protest? A. Yes, sir; to Mr. Riley; not to me.

Q. He was a member of this committee that O K'd the account Mr. Johnson referred to? A. Mr. Baldwin O K'd all bills.

Q. Don't you know and didn't you know that Mr. Peake protested to the committee against paying any bills that were O K'd by Mr. Baldwin? A. I presume he did. He objected to everything that was done.

Question repeated. A. Of my own knowledge; no, sir.

Q. You mean to say that you never heard Mr. Peake say he protested to and objected to the committee paying accounts O K'd by Mr. Baldwin? A. I don't recollect whether I heard him object to it; from my own knowledge I don't recollect about it.

Mr. Maddox announces his case-in-chief as closed.

* * * * *

259

Testimony of J. T. Petty.

By Mr. LAMAR:

Q. Prior to the service on you as auditor for the District of Columbia, on the garnishment proceedings, and prior to the setting aside of the fund with which to meet the claim in controversy, had or had not your attention, as auditor, been called to the existence of an instrument executed by Baldwin & Peake in favor of Thomas R. Riley, authorizing the latter to receive all funds derivable from this particular contract?

Mr. Warren objects.

A. I heard of the existence of such a paper, but never gave it any official recognition.

Q. Subsequent to the execution of that instrument from Baldwin & Peake to Thomas R. Riley, wasn't the practice of your office to advise Mr. Riley of the purpose on the part of your office to deliver checks to the firm of Baldwin & Peake, and is it not a fact that Mr. Riley was present at your office on each occasion that such checks were delivered payable to the order of Baldwin & Peake? A. He was there, I believe; about every payment that was made he would call up over the 'phone and ask if such a check was ready. He was notified in different ways.

Q. Did you ever deliver any of those checks except when Mr. Riley was present, after the execution of this instrument? A. I think he was present every time.

Mr. Lamar offers in evidence the original instrument which is attached to the original bill or cross-bill in this cause.

260 Counsel here offers in evidence the paper executed by Frank Baldwin and W. C. Peake in favor of Thomas R. Riley, in the month of August (25th), 1898. This paper was an exhibit to the original bill in this cause.

Mr. Warren objects.

By Mr. WARREN:

Q. Was or was not the money reserved before you had any relations with Mr. Riley? A. I don't say that I had any financial relations with Mr. Riley. I never recognized that paper.

Q. Did you ever see Mr. Riley in connection with this contract? A. Yes, sir.

Q. Was the money reserved before you saw Mr. Riley? A. Yes, sir.

By Mr. PRENTISS:

Q. About the time the Mitchell & Reed claim was filed, were other claims filed against Baldwin & Peake? A. Yes, sir.

Q. Can you state who filed claims and the amount of them? A. I could not from memory. A number of claims were filed against Baldwin & Peake, and all of them, with possibly three or four exceptions, were withdrawn. In the case of those exceptions magistrates' judgments were obtained against the amount retained in my hand and paid. This one was not paid.

Q. Do you recollect how the total amount of those claims compared with the amounts due Baldwin & Peake? A. The amount of the contracts was something over 25,000.00.

261 Q. I mean the payments accruing to them under the contract while these claims remained with you. Have you a record of the claims filed? A. I hardly think I have; I think when those claims were withdrawn I gave up all those papers.

Q. Did you pay any money to Baldwin & Peake after those

numerous claims were filed there? A. We paid all that was paid to Baldwin & Peake.

Q. You didn't pay anybody else? A. We had nothing to do with the cases that were withdrawn; I simply dealt with Baldwin and Peake.

Q. While those claims that were withdrawn were filed with you did you withhold any money belonging to Baldwin and Peake? When those claims were filed did you recognize them as you did—
A. Exactly, and proposed to hold the money until the claims were withdrawn; then the matter passed out of my hands. I reserved the money for the claims I held.

Q. Did the Alfred Richards Brick Company file a claim with you? A. I don't recollect the name; it is more than likely they did.

Q. Do you remember whether James Bennett filed a claim? A. I don't recollect the names; we have had so many of these contracts tied up in this way it would be difficult for me to state the facts in regard to any particular contract.

By Mr. WARREN :

262 Q. I notice in your answer to the garnishment you have some funds, 241.53, deposited with me on account of the claim of Mitchell & Reed for materials, &c., subject to judicial determination as to payment?

Mr. Douglass objects.

* * * * *

Testimony of Henry Dodge.

HENRY DODGE, a witness of lawful age, produced on behalf of the claim of William Witthaft, being by me first duly sworn according to law, was examined on the following interrogatories to his propounded in that behalf, — makes oath, deposes, and says as follows—that is to say :

By Mr. LAMAR :

Q. You have stated in your examination relative to certain other cases that you disbursed funds for labor and materials on these various three life-saving stations which were turned over to you by Mr. Poole as agent for Baldwin and Peake. Will you kindly state whether or not all funds so delivered by Mr. Poole to you for disbursement were actually paid for material or labor performed or bestowed upon one or the other of these three life-saving stations, False cape, Dam Neck Mills, and Caffey's inlet? A. It was all paid for labor and material on these three life-saving stations, Dam Neck Mills, False cape, and Caffey's inlet.

Q. State whether or not these disbursements were made prior to or subsequent to April 12th, 1898. A. After.

HENRY DODGE,

By F. WALTER BRANDENBURG, *Examiner*

263 *Exception of Defendant Thomas R. Riley to Auditor's Report.*

Filed November 19, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

And now comes the defendant Thomas R. Riley and excepts to the report of James G. Payne, Esq., auditor, filed herein October 19th, 1900.

This defendant excepts to said report because the said auditor applied various sums of money collected from the District of Columbia, amounting to between seven and eight thousand dollars, on account of school-houses erected by Baldwin & Peake, to the payment of claims for labor and materials supplied them on certain life-saving stations erected for the United States on the coasts of North Carolina and Virginia, whereas the money collected from the District of Columbia, having been diverted to pay for labor and materials in respect of life-saving stations, should have been deducted by the auditor from the fund in this cause received from the United States and credited to the fund received from the District of Columbia for school-houses, and distributed to the creditors of Baldwin & Peake having claims for labor and materials in respect of said school-houses.

Wherefore this defendant excepts to said report of the auditor and appeals therefrom to the judgment of this honorable court.

S. T. THOMAS,
Attorney for Exceptant.

264 *Exceptions to Auditor's Report by Witthaft.*

Filed November 19, 1900.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227.
vs.		
THOMAS R. RILEY ET AL.		

The defendant William Witthaft, a creditor of the defendants Baldwin and Peake, for exceptions to the report of the auditor filed herein on the 19th day of October, 1900, says:

1. That the auditor erred in finding, as a matter of fact, that there was no agreement or understanding that Thomas R. Riley should not claim and receive compensation for such services as were performed under the so-called power of attorney from Baldwin and Peake or as a member of a certain creditors' committee consisting of Messrs. Thomas R. Riley, S. Dana Lincoln, and Samuel Ross.

2. That the auditor erred in allowing said Riley compensation as such attorney or committeeman out of the funds in the hands of the receivers:

(a.) Because the said Riley became such attorney and served as treasurer and member of said creditors' committee purely out of regard for and in the interest of himself as a creditor who desired the closest connection with the financial affairs of said firm, and he utilized said position, as far as possible, for the advancement of his own interests as such creditor.

265 (b.) Because under all of the facts and circumstances it would be inequitable for the said Riley to receive more by way of compensation for his services and to the deprivation of other creditors than his commissions as one of the receivers.

3. That the auditor erred in according to the claim of the said Riley, so erroneously allowed, a preference over the claims of other general and even preferred creditors.

4. That even if the contention is correct as to preferment as against the fund collected by the temporary receivers from the construction of school-houses, on which the services of said Riley were chiefly and almost wholly expended, the auditor erred in not holding that the same principle applied to and he should have been paid wholly out of the \$779.53 shown to have been in his hands at the time of the collection of said school-house money by said temporary receivers and until long after his said attorneyship ceased by operation of law and the service on him of an order restraining him from the disbursement of the fund so held.

5. That if the action of the auditor is correct in allowing such commissions to said Riley and in crediting him with said \$779.53 on the ground that *that* it was so expended by him in the payment of labor and material claims themselves entitled to preferment against the fund desired from Hog Island station, the auditor erred in requiring the fund desired from Caffey's Inlet, Dam Neck Mills, and False Cape life-saving stations to be used toward the
266 payment to the said Riley of the \$817.94 not provided for from the school-house funds collected by the temporary receivers, as aforesaid.

6. That if the said Riley was entitled to any preferment whatsoever, the auditor erred in allowing any part of the same as a superior equity to that of the said Witthaft:

(a.) Because the rights of said Witthaft, as an equitable assignee, were fixed and vested long prior to the date of the power of attorney of said Riley.

(b.) Because the claim of said Riley, if entitled to preference whatsoever against Caffey's Inlet, etc., and Hog Island funds, was secondary to the equities of said Witthaft and should have been satisfied out of the surplus remaining after the payment of all preferred claims against said Hog Island fund.

(c.) Because said Riley performed no actual labor on said Caffey's Inlet, False Cape, or Dam Neck Mills stations; he never saw any one of the four life-saving stations, and the principal, if not the entire,
19—1081A

part of his supervisory authority and attention was bestowed upon the Hog Island life-saving station, the last completed.

7. That the auditor erred in finding that there was due and owing from the said firm unto the said Riley, as a general creditor, an additional sum of \$3,743.02.

8. That the auditor erred in giving credit to said Riley, individually or as treasurer for the committee aforesaid, for any and all funds as shown by the account rendered in the name of Riley, Lincoln, and Ross, and also by the testimony, to have been paid
267 by the said Riley for himself or as such treasurer unto himself, Samuel Ross, and S. Dana Lincoln, or either of them, in their several capacity as creditor or creditors of said firm, or as creditor or creditors of said committee, or as creditors of said Thomas R. Riley in his representative capacity.

9. That the auditor erred in giving credit to the said Riley, individually and as treasurer for the committee aforesaid, for any and all funds shown by the account rendered in the name of Riley, Lincoln, and Ross or in the testimony to have been paid to J. T. Petty, auditor for the District of Columbia, in exchange for which payment or as a direct result thereof other funds of a greater amount were received from said auditor, directly or immediately through the firm of Baldwin and Peake, to be applied upon an individual claim or claims of the said Riley or a firm or individual claim of said Samuel Ross, trading under the firm name of Barber and Ross, against said firm of Baldwin and Peake.

10. That the auditor erred in not designating the instances in which the said Riley diverted funds within the meaning of the final decree on the cross-bill of defendant Peake, filed herein on the 26th day of January, 1900, holding the said Riley personally liable therefor and to the extent thereof.

11. That the auditor erred in allowing the claim of Samuel Ross, trading under the firm name and style of Barber and Ross:

* a. Because the claim was not filed within the time limited therefor.

268 b. Because the testimony shows that there were certain extras and overcharges which the said Barber and Ross could not lawfully charge against the said firm of Baldwin and Peake, to the extent of over five hundred dollars, and which should have been deducted from the claim against said firm.

c. Because the auditor should have allowed credit for the check of \$1,630.80 given to said Ross by said Peake on the 29th day of July, 1898, as testified to by witnesses Peake and Hillengass.

d. Because the auditor should have allowed credit for the materials shown to have been received back by said Samuel Ross, trading as aforesaid, and which were neither turned over to the receivers.

12. That the auditor erred in giving credit to said Ross, a member of the said creditors' committee of Riley, Lincoln, and Ross, for any and all funds held by said committee in such fiduciary capacity in so far as the same are shown by the account rendered in the name of said committee or in the testimony to have been applied to or

toward the payment of any claim or claims of the said Samuel Ross individually or to Samuel Ross as the firm of the said Barber and Ross or Thomas R. Riley or S. Dana Lincoln against said firm of Baldwin and Peake, against said committee, or against Thomas R. Riley as agent of said firm.

13. That the auditor erred in not charging said Ross as a member of said committee with any and all funds paid by said committee through its said treasurer, Riley, to J. T. Petty, auditor for
269 the District of Columbia, in exchange for which payment or as a direct result thereof other funds of a greater amount were received from said auditor, directly or immediately through the firm of Baldwin and Peake, and applied upon any individual claim of the said Samuel Ross or of his said firm or of the said Thomas R. Riley as a creditor or creditors of the firm of Baldwin and Peake.

14. That the auditor erred in allowing the claim of the Alfred Richards Brick Company :

a. Because said claim is not affirmatively proven, but, on the contrary, it is shown by the testimony and even by a report made by S. J. Fague under stipulation to which said company was a party that a large quantity of brick for which allowance is made in said report of the auditor was never actually delivered by said company to said firm of Baldwin and Peake.

GEORGE H. LAMAR,
Solicitor for William Witthoft.

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Opinion of Justice Barnard.

Filed April 2, 1901.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL, Complainant,	}	Equity. No. 20227.
<i>against</i>		
BALDWIN & PEAKE, Defendants.		

Without going at any length into this case, I will briefly state the conclusions that I have reached.

It seems that Baldwin and Peake were contractors with the District authorities for the building of some school-houses in the District, and they were also contractors with the United States for the construction of four life-saving stations on the coast, and had perhaps some other work on hand at the same time, but they became financially embarrassed after they had entered upon this work, and were unable to complete it without some assistance from their creditors.

The contracts for the life-saving stations required that they should give bond for the payment of all the claims incurred on account of the stations, including materialmen and laborers. The contract with the District at that time required no such bond as that, but there was some provision, I believe, in the contract by which, if

they did not pay those bills, the Commissioners might retain the money in their hands for payment until such claims were paid on account of the school-house work.

The work on the life-saving stations had reached a point where they must have some money or discontinue the work.

271 One of the questions involved in this case is the situation in which Mr. Witthaft is placed, the gentleman to whom they went for assistance to obtain the money for the purpose of carrying on the contract for the life-saving stations. They applied to a gentleman in this city who endorsed their note or notes with the express understanding, as appears from the record and the assurance not only to him but to the bank from which the money was obtained, that he was to be repaid out of the first funds received from the contracts for the life-saving stations. With that understanding they were enabled to raise some money from a bank in this city, and that money was used by them in the construction of those houses or the completion of them. But about that time, as I have said, their financial distress was such that the creditors on account of the school-house work, a number of them at least, had notified the Commissioners not to pay Baldwin and Peake any money until their bills were settled, and proceedings were about to be stopped on the school-houses. At that stage of the case Mr. Riley was appointed attorney-in-fact to take up their work and go on and complete it, not only on the school-houses, but on the life-saving stations. The Washington creditors as to the school-houses seem to have had a meeting to consider the situation and concluded that their best plan was to release the money in the hands of the Commissioners, and it appears that they withdrew their objection to Baldwin and Peake receiving the money, *provided* the money should be turned over to Riley as attorney-in-fact of Baldwin and Peake, and he be allowed to go on and complete the work, not only on the school-houses, but on the life-saving stations.

The other creditors—that is, the creditors on account of the life-
272 saving stations—were not called into that conference, or any of the general creditors of Baldwin and Peake, as it appears, but only the creditors who had furnished supplies, material, and labor for the school-houses. On this agreement being reached by the creditors a committee was appointed on their behalf, consisting of Mr. Samuel Ross and Mr. Lincoln, who acted in an advisory way, at least, with Mr. Riley in the completion of this work. In other words, it seems that the situation was that instead of Baldwin and Peake going on and completing the work by themselves the Washington creditors undertook to help them out, go into partnership with them; so to speak, or to put themselves in the place of Baldwin and Peake to complete this work, the inducement being the hope that there would be sufficient profits in the two jobs to pay everybody in full connected with the school-houses and the life-saving stations. At least, that was the hope, as it appears. Before the work was completed or before the money was drawn from the Treasury Department to pay for the life-saving stations the sureties on

the bond of these contractors, to see that the life-saving stations were completed and the materialmen paid, brought the matter into this court of equity, and receivers were appointed and the balance of the funds were collected by them from the Government. It seems, however, that the Treasury officers insisted that before that money should be turned over to the receivers certain of the bills that had been made known to them for material and labor on the life-saving stations should be first paid, and the receivers obtained authority to pay those bills. Afterwards they obtained authority to contest some of the bills that were presented, but not on the theory that they were not to be paid if allowed.

273 The matter, then, was adjudicated, in a way, and sent to the auditor, and the auditor stated the account, taking up all these various matters and undertaking to make an equitable distribution of the funds. There were very many claims and very many questions arising in the course of the stating of the account, but it seems to me that the parties who are now excepting to this account are really not in a position to insist that the allowances made by the auditor in behalf of the materialmen and those who furnished money for the life-saving stations are not proper or that said creditors should not have the preference that the auditor has allowed. It seems to me it would be inequitable, they having really assumed the character of builders and contractors themselves without inviting these creditors into the arrangement in any shape at all, and those creditors having at least the bond or surety for their payment, if they had no mechanics' lien; and those sureties, it seems to me, have the right to ask that that fund shall be paid in order to relieve them. They were simply sureties. They were not invited into this conference, as far as I can see from the record, to agree to this arrangement. The money that was obtained from the District Commissioners on account of the school-house work and used by these parties was in fact used by Baldwin and Peake for the construction of the other property, and the parties who were interested in the life-saving stations are not under any necessity of inquiring into the source of it.

274 The auditor has distributed the money in payment of those claims first, and has allowed to Witthart a portion, at least, of his claim on account of the money that was used on those life-saving stations on the theory, as stated in his report, that it operated as an equitable assignment, and I should say under the circumstances under which that money was obtained, and the assurances that were held out and the notification that was given to their attorney, Riley, and the promises that he assured these parties would be carried out on his part, that this money should be paid when it was received for these life-saving stations, that it would be inequitable for them to say that it should not be paid.

Under the circumstances, I shall overrule all of the exceptions to the auditor's report and confirm the same.

I may add that there is an exception that was urged on account of the compensation that was allowed to Mr. Riley. He was one of

the creditors, it is true, but he devoted a great deal of time and a good deal of responsibility to this work, and I am not inclined to say that he is not entitled to some compensation for that. The auditor has allowed him a reasonable compensation, I think, and the exception to that will be overruled with the others.

Mr. Ross files an exception because he was not allowed a payment of one hundred and twelve dollars and some cents that appears to be shown by a voucher or, at least, by an account that was made up and filed with the papers. I am unable to find any testimony relating to that item, but the voucher itself, the item that is referred to, does show a balance of \$112.11, but it is only a bill and it is made out by Barber and Ross on Riley, Lincoln, and Ross, apparently a committee. That is a bill on which they have received \$2,800, and it shows that they furnished the material, perhaps, for carrying out this work after it went into Riley's hands as attorney; and I find also that Barber and Ross are allowed in this statement of account the sum of \$4,398.07. It is not clear but that this item is not included in that amount, so I shall overrule that also.

I think that disposes of all the matters that were argued. There are a great many exceptions, but they all apply to this question of preference, and the Witthafft claim, and to the Riley compensation, and this little item of Ross'.

As I have stated, I will sign a decree overruling the exceptions and confirming the auditor's report.

JOB BARNARD, *Justice*.

276 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, { ss :
District of Columbia,

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 275, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copies of which are made part of this record, in cause No. 20227, equity, wherein Richard Rothwell *et al.* are complainants and Thomas R. Riley *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 10th day of April, A. D. 1901.

Seal Supreme Court
of the District of
Columbia.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1081. The Alfred Richards Brick Company *et al.*, appellants, vs. Richard Rothwell *et al.* No. 1082. Samuel Ross, trading as Barber & Ross, appellants, vs. Richard Rothwell *et al.* No. 1083. William H. West *et al.* vs. Richard Rothwell *et al.* No. 1084. William Garthe, appellant, vs. Richard Rothwell *et al.* Court of Appeals, District of Columbia. Filed Apr. 15, 1901. Robert Willett, clerk.

RETURN TO WRIT OF CERTIORARI.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1901

No 1081.

THE ALFRED RICHARDS BRICK CO. ET AL.,
APPELLANTS,

vs.

RICHARD ROTHWELL ET AL.

No. 1082.

BARBER AND ROSS, APPELLANTS,

vs.

RICHARD ROTHWELL ET AL.

No. 1083.

WM. H. WEST AND BRO., APPELLANTS,

vs.

RICHARD ROTHWELL ET AL.

No. 1084.

WILLIAM GARTHE, CLAIMANT, APPELLANT,

vs.

RICHARD ROTHWELL ET AL.

FILED MAY 25, 1901.

THE UNITED STATES OF AMERICA, ss:

[Seal Court of Appeals, District of Columbia.]

The President of the United States of America to the honorable the justices of the supreme court of the District of Columbia, Greeting:

Whereas in a certain suit in said supreme court, between Richard Rothwell *et al.*, complainants, and Thomas R. Riley *et al.*, defendants, equity, No. 20227, which suit was removed to the Court of Appeals of the District of Columbia by virtue of an appeal agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit, "report of the receivers, filed in the supreme court of the District of Columbia on June 4, 1900, and the order of court thereon, passed on the 4th day of June, 1900:"

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Court of Appeals, so that you have the same, together with this writ, before the said Court of Appeals forthwith.

Witness the Honorable Richard H. Alvey, Chief Justice of the said Court of Appeals, the 24th day of May, in the year of our Lord one thousand nine hundred and one.

ROBERT WILLETT,

Clerk of the Court of Appeals of the District of Columbia.

[Endorsed:] Court of Appeals of the District of Columbia. Nos. 1081 to 1084. April term, 1901. The Alfred Richards Brick Co. *et al. vs. Barber & Ross et al.* Writ of certiorari.

Filed June 4, 1900. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227, Docket 46.
vs.		
THOMAS R. RILEY ET AL.		

The undersigned, permanent receivers of the firm of Baldwin and Peake in said cause, respectfully report as follows:

Pursuant to the order of the court passed herein on the fifth day of May, 1900, Messrs. George H. Lamar and S. T. Thomas were selected as attorneys for the receivers and supplied with the funds therein directed to be used in the payment of counsel fees and expenses in connection with the institution of suit on the bond of one William J. Brent with Herman Drinkwater and John N. Hart as sureties.

In the belief that said Hart could be served with process before leaving the said District of Columbia, suit was duly instituted in the supreme court of the District of Columbia on the 9th day of May, 1900;

that thereafter, to wit, on the 19th day of May, 1900, all of your receivers, together with said George H. Lamar, one of said attorneys, were present in the city of Norfolk, in the State of Virginia, in the vicinity of which the principal and sureties on said bond reside, and it was found that the said John N. Hart was the only one of the parties liable on said bond who had any financial standing whatever; that said Hart's affairs are in such condition as that the probabilities are that before judgment could be obtained on a suit all the equities he has in properties there will have been dissipated and he become a bankrupt. Your receivers were, however, impressed with the idea that both said Brent and said Hart were willing to waive respectively the whole and the greater part of their claims against the fund now in the hands of your receivers in order to avoid for said Hart the consequences incident to the institution of suit and of proceedings in insolvency which might logically follow; and after most careful and conscientious consideration of the facts and circumstances of the whole case your receivers and said counsel therefor entered into the stipulation hereto attached as a part hereof, subject to the ratification and approval of this honorable court, the substance of which stipulation being that the aggregated claims of said Brent and Hart of \$9,387.12 be reduced to \$1,850 in favor of said Hart on account of material furnished on the Hog Island life-saving station in consideration for an abandonment of the proceedings for the enforcement of said bond of \$6,000.

Your receivers further report that the presence in Norfolk of Mr. William C. Peake, as well as Receivers Charles A. Douglass and Thomas R. Riley, was deemed by the majority of your receivers of the utmost importance, and the payment of their necessary expenses out of the funds in the hands of said attorneys is craved, after deducting which expenses, together with the court and other costs and expenses incurred in pursuance of the order of the court aforesaid, your receivers further recommend that said counsel for the receivers be permitted to retain such balance of said sum of five hundred dollars (\$500) as may remain in their hands as compensation for their services in the premises.

Wherefore and because of the premises it is respectfully asked that this honorable court will pass such order as in the judgment of the court the exigencies of the case may require.

CHAS. A. DOUGLASS,

THOS. R. RILEY,

CLARENCE A. BRANDENBURG,

Receivers of Baldwin & Peake.

S. T. THOMAS,

GEORGE H. LAMAR,

Solicitors for Receivers.

DISTRICT OF COLUMBIA, ss:

We, Charles A. Douglass, Clarence A. Brandenburg, and Thomas R. Riley, on oath say that we have read the foregoing report by us

subscribed and know the contents thereof, and that the matters therein set forth as to our personal knowledge are true, and those set forth on information and belief we believe to be true.

CHAS. A. DOUGLASS,
THOS. R. RILEY,
CLARENCE A. BRANDENBURG,
Receivers for Baldwin and Peake.

Subscribed and sworn to before me this 4th day of June, A. D. 1900.

[SEAL.]

JOSEPH SALOMON,
Notary Public, D. C.

Stipulation.

It is hereby stipulated by John N. Hart and William J. Brent, by their attorney; by George H. Lamar, representing various creditors and as one of the attorneys for the receivers; by Thomas R. Riley, a creditor and one of the receivers, and by Charles A. Douglass, on behalf of the complainants and as one of the receivers, and by William C. Peake for himself and on behalf of the firm of Baldwin and Peake, that in consideration of the withdrawal and abandonment of the claims of W. J. Brent herein filed and of the claims of John N. Hart against Baldwin and Peake and against Thomas R. Riley on account of materials furnished for the construction of Dam Neck Mills, False Cape and Caffey's Inlet life-saving stations, and the further consideration of the rejection of the amount of the claim of John N. Hart against Baldwin and Peake and Thomas R. Riley for materials furnished in the construction of the Hog Island life-saving station in excess of the sum of \$1,850.00, which sum it is agreed between the parties hereto is justly due and payable to said Hart on account of materials furnished for the construction of the said life-saving stations and is to be paid him out of the amount paid the receivers on account of said station, which sum of \$1,850.00 is to represent the full amount of all claims of every character and kind whatsoever of said John N. Hart, the said remaining parties to this stipulation in consideration thereof hereby agree that as far as they are concerned, and as far as they can do so, that the action heretofore directed to be instituted against William J. Brent and John N. Hart upon the contract and bond entered into between said Brent and Hart with Baldwin and Peake on August 9th, 1897, for the construction of the life-saving stations known as False Cape, Dam Neck Mills and Caffey's Inlet shall be abandoned, and that they will join in the recommendation to the court that in view of the facts since ascertained and the foregoing stipulation on that part of the other parties to this agreement that said suit be discontinued and all proceedings upon said contract and bond be abandoned and the contract and bond be cancelled.

Order Relative to Suit on Bond.

Filed Jun- 4, 1900.

In the Supreme Court of the District of Columbia.

RICHARD ROTHWELL ET AL.	}	Equity. No. 20227.
<i>vs.</i>		
THOMAS R. RILEY ET AL.		

Upon consideration of the report of the receivers, filed herein on the 4th day of June, 1900, and of the stipulation thereto attached it is by the court this 4th day of June, 1900, adjudged, ordered, and decreed that said stipulation be, and the same is hereby, ratified and confirmed and said William J. Brent is hereby concluded from asserting any claim whatsoever and the said John N. Hart from asserting any claim in excess of the sum of \$1,850.00 against the firm of Baldwin and Peake or any agent of said firm in the premises, as more particularly stated in said stipulation; and in consideration of the waiver of said Brent and Hart, aforesaid, the receivers herein are authorized and directed to abandon any and all proceedings on the bond of William J. Brent, mentioned in said report and referred to in the order passed herein on the 5th day of May, 1900, and all claim arising under said bond against said Brent and Hart is hereby relinquished.

And it is further ordered that the expenses incurred by Messrs. Charles A. Douglass, Thomas R. Riley, and William C. Peake, as stated in said report, are to be paid out of the fund of \$500.00 in the hands of attorneys S. T. Thomas and George H. Lamar, and that the balance remaining of said fund, after the payment of such other expenses as have been incurred in pursuance of the order of this court passed on the 5th day of May, 1900, be received and retained by said attorneys as compensation for their services in the premises.

JOB BARNARD, *Justice.*

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify, in obedience to the writ of certiorari hereto attached and returned herewith, that the foregoing are true and correct copies of the "report of the receivers, filed in the supreme court of the District of Columbia on June 4, 1900, and the order of the court thereon, passed on the 4th day of June, 1900," containing the words and figures omitted from the record heretofore transmitted to the Court of Appeals of the District of Columbia in cause entitled Richard Rothwell *et al.* vs. Thomas R. Riley *et al.*, No. 20227, in equity.

In testimony whereof I hereunto subscribe
Seal Supreme Court my name and affix the seal of said court, at
of the District of the city of Washington, this 24th day of May,
Columbia. A. D. 1901.

JOHN R. YOUNG, *Clerk*.

Endorsed on cover: District of Columbia supreme court. Nos.
1081 to 1084. The Alfred Richards Brick Co. *et al.*, appellants, *vs.*
Richard Rothwell *et al.* Return to writ of certiorari. Court of
Appeals, District of Columbia. Filed May 25, 1901. Robert Wil-
lett, clerk.

